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TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,560

WALTER E. TAYLOR, JR., Trustee in Bankruptcy for B. SAM ENGRAM, Bankrupt,

Appellant,

versus

MRS. MABEL DELL ENGRAM,

Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

(ORIGINAL RECORD RECEIVED FEB. 20/57.)

FILED
MAY 3 1957

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA, COLUMBUS DIVISION.

Bankruptcy No. 2313 and 2316.

IN THE MATTER OF:

B. SAM ENGRAM,

Bankrupt.

W. E. TAYLOR, JR., Trustee of B. Sam Engram, Bankrupt,

Appellant,

versus

MRS. MABEL DELL ENGRAM,

Appellee.

Appearances:

Mr. T. T. Molnar, Attorney at Law, Attorney for Trustee, P. O. Address, Cuthbert, Georgia, Attorney for Appellant.

Stone & Stone, Attorneys at Law, Blakely, Georgia; Mr. Joe M. Ray, Attorney at Law, Cuthbert, Georgia, Attorneys for Appellee.

APPEAL from the District Court of the United States for the Middle District of Georgia, Columbus Division, to the United States Court of Appeals for the Fifth Circuit, returnable at the City of New Orleans, Louisiana.

Filed at 4:30 P M. Mar. 30, 1955.

In the District Court of the United States for the Middle District of Georgia, Columbus Division.

#2313.

To the Honorables T. Hoyt Davis and W. E. Bootle, Judges of the United States District Court for the Middle District of Georgia.

The petition of Wells Dairies Co-Operative, of Columbus, Georgia and Southland News Co., of Chattanooga, Tenn., and National Magazine Service, Inc., of Newark, New Jersey, and Southern Druggists, of Atlanta, Georgia, respectfully shows:

(1.)

B. Sam Engram of Cuthbert, Georgia, has resided and has his domicile in Randolph County, Georgia, within the above Judicial District, for the six months immediately preceding the filing of this petition.

(2.)

To the best of your petitioners' knowledge, information and belief, said B. Sam Engram, within six years next preceding the filing of this petition, has not been known and has not conducted any business by or under any assumed, trade or other names or designations except "Engram's Drug Shop" located in Cuthbert, Georgia and in Fort Gaines, Georgia.

(3.)

Said B. Sam Engram owes debts in the amount of $1000.00 or over and was not a wage earner or a farmer at the time when the acts of bankruptcy occurred.

(4.)

Your petitioners are creditors of said B. Sam Engram, having provable and unsecured claims against him, liquidated as to amount and contingent as to liability, amounting in the aggregate to more than $500.00. The matter and amount of your petitioners' claims are as follows:

(a) Wells Dairy Co-Op., $750.00 or more—merchandise shipped on open account during the past two years.

(b) Southland News Company—$528.43—merchandise shipped on open account during the years 1953 and 1954.

(c) National Magazine Service Inc.—$145.55—merchandise shipped on open account during the years 1953 and 1954.

(d) Southern Druggists, —$517.93— merchandise shipped on open account during the years 1953 and 1954.

(5.)

Within the four months next preceding the filing of this petition, the said B. Sam Engram committed acts of bankruptcy in that while having more than one creditor he did transfer certain of his property consisting of cash the amount of which is to petitioners unknown at present but will be supplied by amendment to this petition to several of his creditors whose names will be supplied by amendment to this petition, in payment of antecedent debts, the effect of which transfers was to enable said creditors to obtain a greater percentage of their debts than some other creditors of B. Sam Engram of the same class, the particulars of said payments will be furnished by amendment to this petition.

(a) Also, within the four months next preceding the filing of this petition, the said B. Sam Engram, has conveyed, transferred, removed and permitted to be concealed and removed a part of his property, to wit: cash and also drug store fixtures to party and parties at this time unknown to petitioners the names of whom will be furnished by amendment hereto.

(b) Also, within the said four months next preceding the filing of this petition, the said B. Sam Engram, while insolvent and unable to pay his debts as they mature, procured, permitted and suffered voluntarily the appointment of a "temporary receiver" to take charge of some of his property, to wit: the fixtures, stock of goods, wares and merchandise in the drug store owned by him in Cuthbert, Georgia and Fort Gaines, Georgia.

Wherefore, your petitioners pray that service of this petition, with a subpoena, may be made upon said B. Sam Engram as provided in the Bankruptcy Act and that he may be adjudged by the Court to be a bankrupt within the purview of said Act.

T. T. MOLNAR,
(T. T. Molnar),
Attorney for: Wells Dairies Co-Op., Southland News Co., National Magazine Serv., Inc., Southern Druggists.

P. O. Address:
Cuthbert, Georgia.

Georgia,
Bibb County.

Personally appeared before the undersigned authority T. T. Molnar who on oath says that he is attorney at law for the above-listed creditors, that he is duly authorized to file the within petition on behalf of said creditors, and to make this affidavit in their behalf and that the statements contained in the foregoing petition are true and correct to the best of his knowledge and belief.

T. T. MOLNAR.

Sworn to and subscribed before me this 30th day of March, 1955.

LUCILE H. ROBINSON,
(Seal) Dep. Clk., U. S. Dist. Ct.

Filed Mar. 30, 1955.

(Title Omitted.)

The petition of Wells Dairies Co-Operative, Southland News Company, National Magazine Service, Inc. and Southern Druggists, respectfully shows:

(1.)

That petitioners have filed a petition in involuntary bankruptcy against B. Sam Engram of Cuthbert, Randolph County, Georgia, on the 30th day of March, 1955, which said petition is now pending in the United States District Court for the Middle District of Georgia.

(2.)

That B. Sam Engram is the owner of valuable real and personal properties, including his home in Cuthbert, Georgia, stock of wares, goods, merchandise and fixtures in Cuthbert and in Fort Gaines, Georgia, several automobiles and a one-third undivided interest in the estate of his deceased father, Samuel Franklin Engram, late of Clay County, Georgia, which estate consists of very valuable lands, a valuable home and several other buildings, all in Clay County, Georgia, also some cash, furniture and other assets.

(3.)

That R. W. Wicker, whose address petitioners do not know, but whose address they state from information and belief to be LaGrange, Troup County, Georgia has a second lien on said home of B. Sam Engram in Cuthbert, subject to a first lien in favor of the

Randolph County Federal Savings and Loan Association, which second lien petitioners are informed to be less than $1000, or thereabouts, the first lien being less than $7000. That said home is of considerably more value than these liens the Federal Housing Administration having appraised the same at approximately $12,500.00 which appraisal is and was very conservative, said property having a value of approximately $15,000.00. That said R. W. Wicker is now advertising for sale said property under a power of sale to be held on the first Tuesday in April, 1955.

(4.)

That Mrs. L. C. Clark of Cuthbert, Randolph County, Georgia, has a bill of sale to secure debt on the stock of goods, wares and merchandise and fixtures on the drug store of B. Sam Engram in Cuthbert, Georgia, on which there is an unpaid balance due. Petitioners state from information and belief that said balance due is less than $2000 and that the value of said personal property is several times that amount. Said Mrs. Clark is now advertising said personal property for sale under power of sale, on the first Tuesday in April, 1955.

(5.)

That, if permitted to sell said property or properties, as advertised, they will bring considerably less than their fair values and the creditors of B. Sam Engram will suffer irreparable losses and there will be a multiplicity of suits, due to the fact that the said B. Sam Engram, by some collusion, has resisted

petitioners' effort to have a receiver appointed and the said sales stopped.

(6.)

That Jesse G. Bowles, Esq., attorney for the said Wickers and also Mrs. L. C. Clark, has appeared in the Superior Court of Randolph County, Georgia, in his clients behalf, and has stated his intention to proceed with said sales, notwithstanding the fact that the law of Georgia is otherwise. The State Court failed and declined to take appropriate steps to stop said sales and to appoint a receiver for said purpose.

(7.)

That, at the same time while these matters are pending, or were pending, Mrs. Mabel Dell Engram, widow of Samuel Franklin Engram, and mother of B. Sam Engram, has commenced an action before the Ordinary of Clay County, Georgia, to set aside from the estate of her late husband a year's support, notwithstanding the fact that she has had more than one year's support out of said estate and also substantial cash funds. Appraisers have set aside $4500 as a year's support in described property which included most, if not all, the estate of Samuel Franklin Engram, estimated by petitioners from information and belief at $30,000 or more. Said report of said appraisers is set for a hearing before the Ordinary of Clay County, Georgia for the first Monday in April, 1955. Petitioners state that there is a collusion between the said Mrs. Mabel Dell Engram and her son, B. Sam Engram and that the true purpose and intent of said year's support is to defeat the claims of the

creditors of B. Sam Engram, including petitioners' claims.

(7A.)

Your petitioners say that an orderly administration of the property of B. Sam Engram should produce substantial funds over and above the claims of secured creditors, possibly sufficient to pay most of the debts of said B. Sam Engram.

(8.)

That a few days ago B. Sam Engram has, without any order of any Court, voluntarily surrendered to I. J. Lunsford, Clerk of the Superior Court of Randolph County, Georgia, all of the stock of goods, ware, merchandise and fixtures in his stores, naming him, the said Hon. I. J. Lunsford, temporary receiver for the said B. Sam Engram. Said I. J. Lunsford is now in possession, custody and control of said property of B. Sam Engram.

Wherefore, petitioners pray:

(a) That this Honorable Court ratify and confirm the voluntary acts of B. Sam Engram and appoint and name the said I. J. Lunsford temporary receiver under the jurisdiction of this Court, directing said receiver to collect and preserve all of the assets of said B. Sam Engram until further orders of this Court, taking all proper, lawful and necessary steps to do so.

(b) That Your Honors, by appropriate orders, restrain the sale of said real and personal properties until further orders of this Court.

(c) That Your Honors, by appropriate orders, restrain the prosecution of the proceedings in the Court of Ordinary of Clay County, Georgia until further orders of this Court.

(d) Process.

(e) For all other and further relief.

(S.) T. T. MOLNAR,
(T. T. Molnar),
Attorney for: Wells Dairies Co-Op., Southland News Co., National Magazine Serv., Inc., Southern Druggists.

P. O. Address:
Cuthbert, Georgia.

Georgia,
Bibb County

Personally appeared before the undersigned authority T. T. Molnar who on oath says that he is attorney at law for the above-listed petitioners and that he is authorized to file the within petition and to make this affidavit in their behalf and that the statements contained in the foregoing petition are true and correct to the best of his knowledge and belief.

(S.) T. T. MOLNAR.

Sworn to and subscribed before me this 31st day of March, 1955.

(S.) LUCILE H. ROBINSON,
Deputy Clerk, U. S. District Court.

Filed Mar. 31, 1955.

In the District Court of the United States for the Middle District of Georgia, Columbis Division.

In Bankruptcy:

B. Sam Engram.

At Chambers, Macon, Georgia, in said district on the 31st day of March, 1955.

Whereas a petition was filed in this Court, on the 30th day of March, 1955 against B. Sam Engram, alleged bankrupt, above named, praying that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy; and whereas on the 31st day of March, 1955 a petition was filed in said proceeding praying for the appointment of a receiver and for other relief;

It is ordered that the above entitled proceedings be, and they hereby are, referred to the Honorable Edward P. Johnston, referee in bankruptcy of this Court, to take such further proceedings therein as are required and permitted by said Act, and that the said B. Sam Engram shall henceforth attend before the said referee and submit to such orders as may be made by him or by a judge of this Court relating to said bankruptcy.

(Signed) W. A. BOOTLE,
United States District Judge.

Filed: Mar. 31, 1955.

ORDER.

The foregoing petition, with the order of reference, having been presented, it is ordered that the same be filed.

The said order of reference gives to the undersigned Referee, the right to take such further proceeding on said petition for the appointment of Receiver, and upon the other proceedings filed.

It appearing from the allegations of the petition that the two stocks of drugs are in the possession of I. J. Lunsford, under an agreement as a temporary Receiver;

It is ordered that the petitioning creditors be relieved of giving the bond usually required in said case, and conditioned to pay costs;

It is further ordered that the said I. J. Lunsford be, and he is, hereby appointed Receiver of all of the assets of the said alleged bankrupt, wherever located, including the two stocks of merchandise, drugs, and fixtures which he is already holding as a temporary Receiver under an agreement with the alleged bankrupt.

It is further ordered that R. W. Wicker, Mrs. L. C. Clark, and Mrs. Mabel Dell Engram show cause before me at Macon, Georgia, Room 208, Post Office Building on the 20th day of April, 1955, at 11:00 A. M., why the said parties should not be enjoined from proceeding with certain matters, hereinafter named, to-wit:

The said R. W. Wicker is seeking to sell certain property under a second deed to secure debt and he is to show cause why the said sale should not be permanently enjoined; and

The said Mrs. L. C. Clark, who holds a mortgage on the stock of merchandise, drugs and fixtures, for the sum of $2000.00, and which she is proceeding to sell under power in a bill of sale, should not be permanently enjoined; and

Why Mrs. Mabel Dell Engram, the widow of Samuel Franklin Engram should not be enjoined from proceeding with a year's support.

In the meantime, and until the further order of the Court, the said R. W. Wicker, Mrs. L. C. Clark and the said Mrs. Mabel Dell Engram, are all temporarily enjoined from proceeding with sales until after a hearing in this case.

Ordered that the Receiver appointed in said case, give a bond in the sum of $1000.00 for the faithful performance of his duty as Receiver, and as Receiver he is to take charge of and see that the property is well protected, and likewise to collect any and all monies that may be due by said bankrupt in said business.

Let a copy of the petition and this order be served upon the alleged bankrupt, B. Sam Engram, and upon R W. Wicker, Mrs. L. C. Clark, and Mrs. Mabel Dell Engram.

So Ordered, this 31st day of March, 1955.

E. P. JOHNSTON,
Referee in Bankruptcy, Middle District of Georgia.

Filed Mar. 31, 1955.

ORDER.

(Title Omitted.)

On the 31st day of March, 1955, an order was passed calling upon R. W. Wicker, Mrs. L. C. Clark and Mrs. Mabel Dell Engram to show cause before me in Macon, on the 20th day of April, 1955, why said parties should not be enjoined from proceeding in certain matters hereinafter named, and why Mrs. Mabel Dell Engram, the widow of Samuel Franklin Engram, should not be enjoined from proceeding with a year's support.

No answers were filed and B. Sam Engram on said date filed with the Referee his schedules to be filed with the Clerk and he was duly adjudged a bankrupt on the date of the filing of the petition, and a request was made that none of the matters set for April 20th be heard and parties were notified of that fact.

The said order of March 31st, 1955, is amended by enjoining Mrs. Mabel Dell Engram from proceeding with her petition of a year's support out of her deceased husband's estate, the said bankrupt being a child of the said Samuel Franklin Engram.

It is ordered that the said Mrs. Mabel Dell Engram show cause before me on May 11, 1955, at Columbus, Georgia, in the U. S. Court Room, at 9:00 A. M., why she should not be permanently enjoined from proceeding with said petition for a year's support.

This is an amendment to the order of March 31, 1955.

So Ordered, this 2nd day of May, 1955.

E. P. JOHNSTON,
Referee in Bankruptcy, Middle
District of Georgia.

Filed May 2, 1955.

ORDER CONSOLIDATING CASE NO. 2316 WITH CASE NO. 2313.

It appearing to the Court that after an involuntary petition in bankruptcy was filed on March 30, 1955, the said B. Sam Engram filed a voluntary petition of bankruptcy on April 20, 1955, and a first meeting of creditors was called on May 11, 1955, on the voluntary petition;

It Is Ordered by the Court that the voluntary petition be, and the same is hereby consolidated with the involuntary Petition, No. 2313.

So Ordered this May 11, 1955.

E. P. JOHNSTON,
Referee in Bankruptcy, Middle
District of Georgia.

Filed July 18, 1956.

APPOINTMENT OF TRUSTEE BY REFEREE.

United States District Court for the Middle District of Georgia—Columbus Division.

In the Matter of:
B. Sam Engram d/b/a Engram's Drug Shop, Bankrupt.

In Bankruptcy No. 2316.

At Columbus, Ga., in said district, on the 31st day of May, 1955.

The creditors of the above named bankrupt having failed to appoint a trustee as provided in the Act of Congress relating to bankruptcy, I hereby appoint Walter E. Taylor, Jr., of Cuthbert, Georgia, trustee of the estate of said bankrupt, and fix the amount of his bond at Three Thousand dollars.

E. P. JOHNSTON,
Referee in Bankruptcy.

ORDER.

(Title Omitted.)

Mrs. Mabel Dell Engram, who has been enjoined from proceeding with her petition for a Year's Support out of the estate of her deceased husband in the Court of Ordinary of Clay County, Georgia, by order of the Honourable Edward P. Johnston, Referee in Bankruptcy for the Middle District of Georgia by his

order dated May 2nd 1955 in the above-stated matter, and by said order required to show cause why she should not be so permanently enjoined, such order being based upon a petition filed in the above-stated matter by Wells Dairies Co-operative, Southland News Company, National Magazine Service, Inc., and Southern Druggists, moves the Court to dismiss such petition in so far as she is concerned for the following reasons and on the following grounds:

1. This Court lacks jurisdiction to enjoin her from proceeding with her petition for a Year's Support out of the estate of her deceased husband because:

a. In so far as the property inherited by the bankrupt B Sam Engram from his father is concerned, this Court can only deal with the title of the bankrupt and that title is inferior to a Year's Support for his mother out of his father's estate;

b. The creditors of an heir cannot contest with the widow of the heir's intestate her right to a Year's Support out of the estate of said intestate;

c. This Court is without jurisdiction to determine whether or not Mrs. Mabel Dell Engram should be awarded a Year's Support, and whether or not she had already received such a support at the time she filed her petition therefor;

d. As appears from the allegations of the petition, the Year's Support had already been set aside to Mrs. Mabel Dell Engram at the time of the filing of the petition of Wells Dairies Co-operative et al., in this Court, and there is no further act or thing which sh

can do in connection with the granting of the Year's Support, and therefore no act or conduct that can be enjoined.

This May 31st 1955.

JOE M. RAY,
LOWREY S. STONE,
W. L. STONE,
Attorneys for Mrs. Mabel Dell Engram.

Filed May 31, 1955.

In the District Court of the United States for the Middle District of Georgia, Columbus Division.

In Bankruptcy:

B. Sam Engram.

Nos. 2313 and 2316.

To the Honorable Edward P. Johnston, Referee in Bankruptcy.

Now comes Walter E. Taylor, Jr., the duly appointed, qualified and acting trustee in the above named and stated case, and respectfully shows:

1.

That he has examined and investigated the petition filed by Wells Dairies Co-Operative, Southland News Company, National Magazine Service, Inc. and Southern Druggists, against B. Sam Engram, R. W. Wicker,

Mrs. L. C. Clark and Mrs. Mabel Dell Engram, on March 31, 1955, the same being a petition for equitable relief, and also the transcript of the evidence adduced prior to the appointment of petitioner as such trustee. From such investigation your petitioner states that the allegations contained in said petition are true.

2.

Petitioner shows that under Section 70 of the Bankruptcy Act, title to the property of the bankrupt involved in said petition has vested in petitioner and it is petitioner's duty to protect such property.

3.

Petitioner adopts all proper and appropriate allegations of said petition filed on March 31, 1955 as his own.

Wherefore, petitioner prays:

(a) That he be made a party plaintiff, as such trustee, in the equitable proceedings stated, by appropriate order of this Court.

(b) That prayers (b), (c) and (e) of the original petition be granted.

(c) That a permanent injunction be granted enjoining the prosecution and determination of the proceedings in the Court of Ordinary of Clay County, Georgia fully described in said petition filed on March 31, 1955.

(d) For all other and further relief.

T. T. MOLNAR,
(T. T. Molnar),
Attorney for Walter E. Taylor, Jr., Trustee.

Georgia,
Randolph County.

Personally appeared before the undersigned authority Walter E. Taylor, Jr., who on oath says that he is trustee for the above stated bankrupt's estate and that he is authorized to file the within petition and to make this affidavit by law and that the statements contained in the foregoing petition are true and correct to the best of his knowledge and belief.

WALTER E. TAYLOR, JR.

Sworn to and subscribed before me this 30th day of June, 1955.

I. J. LUNGSFORD,
(Seal) Clerk, Superior Court, Randolph County, Ga.

My Commission expires 12/31/56.

Amendment Allowed, July 1, 1955.

E. P. JOHNSTON,
Referee.

Filed Mar. 31, 1955.

THE CASE.

Petition for Order to Enjoin Interference with Bankruptcy Court of Title to One-Third Interest in Estate of Samuel Franklin Engram.

(Title Omitted.)

B. Sam Engram was engaged in the Drug business at Cuthbert, Georgia, for about ten years. On February 11, 1955, Plough Sales Corporation and other creditors filed a petition in the Superior Court of Randolph County for the appointment of a Receiver, and at the time of filing same, the Judge of the Superior Court of Pataula Circuit having jurisdiction of Randolph County granted a restraining order against B. Sam Engram from disposing of any of the property in any manner except in the usual and normal sale of merchandise in the drug store, and fixed February 26th, as the date for B. Sam Engram to show cause why a Receiver should not be appointed.

The case was continued to March 19, 1955, on account of the illness of Joe M. Ray, the attorney for B. Sam Engram.

On March 4, 1955, Joe M. Ray and Stone & Stone filed an answer for B. Sam Engram.

On March 25, 1955, B. Sam Engram filed an amendment to his answer in which he admitted he owed the creditors listed in the original petition in excess of $4000.00, and later would file an amendment in which he would show what he owed. This amendment

was signed by Joe M. Ray and Stone & Stone, attorneys for B. Sam Engram.

On March 28th an amendment was offered by the plaintiff asking for an injunction against certain foreclosures, and for an injunction against Mrs. Mabel Dell Engram from claiming a year's support.

On March 7, 1955, Mrs. Mabel Deli Engram, through Messrs. Stone & Stone, her attorneys, filed in the Court of Ordinary a petition for permanent letters of administration to issue to her upon the estate of Samuel Franklin Engram, her husband. Mrs. Mabel Dell Engram alleged that her husband departed this life on the 9th day of November, 1952, and upon her application she was appointed temporary administrator of said estate of her husband.

She alleged that the real and personal property was worth the sum of $5,000.00 and she gave a bond in the sum of $10,000.00 with her son going on it as surety, to-wit: John S. Engram.

On May 18, 1953, Mrs. Mabel Dell Engram made application for temporary letter of administration on her husband's estate and set out the value of $10,000.00 on her husband's estate, and she was appointed temporary administrator on same date and order to give a bond for $21,000.00, and this bond was signed by her son, B. Sam Engram, the bankrupt.

On March 8, 1955, Joe M. Ray and Stone & Stone, attorneys for Mrs. Mabel Dell Engram filed in the Court of Ordinary an application for a year's support and asked for appointment of appraisers to be select-

ed and set apart the sum necessary in their judgment for support and maintenance for the space of twelve months from the death of the said Samuel Franklin Engram, either in money or such property as may be selected by your petitioner at a fair valuation to be made by said appraisers, and also set aside the household and kitchen furniture.

There was attached to said application a plat and the appraisers on March 8th, the same day, had prepared for them a description of the property of all real estate of Samuel Franklin Engram that he owned, including a house, all of the value of at least $4,000.00. The bankrupt about that time stated in an application for a loan that he owned a one-third undivided interest in his father's estate and his interest was worth $16,-000.00. This statement was made to the Federal Housing Administration with the knowledge that the creditors were proceeding against the bankrupt, for a receiver, and the attorneys for said bankrupt proceeded to get the widow to claim a year's support out of the estate of her husband, for the sole purpose of keeping the creditors of the bankrupt from administering his interest in said estate and these same attorneys also represented the widow.

Also, a motion was made by the trustee to dismiss the answer filed by Mrs. Engram.

Findings of Fact.

1.

On November 9, 1952, the father of the bankrupt died leaving as his heirs at law his widow, the moth-

er of the bankrupt, and a brother of the bankrupt. The bankrupt had a one-third interest in said estate.

2.

The bankrupt so recognized it for he made a written signed statement that his one-third inheritance in his father's estate was worth $16,000.00.

3.

At the time of the death of the father of the bankrupt, he left an estate of over two hundred acres of land in Clay County with a house and certain monies and bonds.

4.

The widow moved from said home after the death of her husband and collected for the years 52-53-54 and '55, whatever rents that were paid.

5.

The widow at the time of the death of her husband made no claim for a year's support, but only made application for temporary letters of administration on the estate of the father of the bankrupt, so as to collect the proceeds of insurance, etc., and lived out of said monies so collected.

6.

The widow has made no account to the two sons for the personal property of the estate; one of these sons is the bankrupt, B. Sam Engram.

7.

The real estate of the father of the bankrupt has been rented since his death, November, 1952. The bankrupt was insolvent at the time of the filing of a petition for a receiver in the State Court, which was on February 11, 1955.

8.

On March 30, 1955, an involuntary petition in bankruptcy was filed against the said B. Sam Engram and on said petition he was duly adjudged a bankrupt.

9.

On March 30, 1955, the trustee became vested with the title to the bankrupt estate, as of the date of filing the involuntary petition under Section 70-C of Bankruptcy Act.

10.

The widow never figured on claiming a year's support out of the estate of her husband until after the filing of the petition for a receiver, against B. Sam Engram, and it was only at the insistence of the attorney for said bankrupt that she made the claim.

11.

She filed through these same attorneys her application for a year's support on March 8, 1955, and on said date appraisers were appointed on the recom-

mendation of the attorneys for Mr. Engram, and on said date made an appraisement, all of which was done without the knowledge or consent of any creditors of B. Sam Engram, as there was nothing to put creditors on notice.

12.

This report had to be filed and advertised for the first Monday in April, 1955, but the parties were enjoined from making it the judgment of the Court.

13.

The said attorneys for Mrs. Engram and for B. Sam Engram the bankrupt started a notice to be published in Clay Court of the action of the appraisers, when the petitioning creditors sought an injunction to prevent same from becoming the judgment of the Ordinary Court, as said action was made solely to hinder, delay and defraud the creditors of B. Sam Engram who had a one-third interest in said estate of his father.

14.

The trustee in bankruptcy was made a party plaintiff, along with the creditors, after he was made a trustee, and adopted the petition of creditors.

15.

The widow by her failure to claim a year's support at time of the death of her husband for a support for twelve months is estopped from claiming it at this time to defeat creditors of B. Sam Engram.

16.

The appraisers set aside the entire estate of the father of the bankrupt, with the exception of a small tract on the edge of the house and lot tract. The part left was of only a few hundred dollars value.

17.

The bankruptcy petition was filed March 30, 1955, and there was an adjudication in bankruptcy on said involuntary petition, and on March 30, 1955, the trustee became vested with the title under Section 70 of the Bankruptcy Act.

18.

The money which the widow collected from the estate of her deceased husband was spent by the widow as temporary administratrix and was unaccounted for and was approximately the same amount that was set apart to the widow for a year's support. The widow had had at least two years support out of the estate.

19.

The widow did not occupy the home after the death of her husband, who is the father of the bankrupt, but as temporary administratrix she was in possession of the property, and rents were received from the property. She has been in the actual physical possession of said property, although not occupying the home, and she claimed a homestead exemption,

which was relinquished only after the petition in bankruptcy was filed.

20.

Samuel Franklin Engram, the husband of Mrs. Engram, and the father of the bankrupt died, leaving a substantial amount of cash, bonds, lands, a home, store building and fixtures, as well as furniture.

21.

At the time when the suit was filed in the State Court, B. Sam Engram, bankrupt had express notice that the alternative would be bankruptcy.

Conclusions.

I conclude from a full investigation in this matter, that this is an effort made by the widow, of Samuel Franklin Engram, and the mother of the bankrupt, to help her son so that his one-third interest in the estate of his father would not be subject to the creditor's claims, B. Sam Engram, and his brother, and the widow, were the only heirs at law of Samuel Franklin Engram, and the estate was worth a considerable amount, and the same attorneys who represented Mrs. Engram represented the bankrupt, and advised Mrs. Engram to take a year's support. There can only be one conclusion from the taking of the year's support by Mrs. Engram and that was that it was done for the deliberate purpose of hindering delaying and defrauding the creditors of B. Sam Engram.

For two years the widow made no claim for a year's support, although she lived off the rents and the other assets of her husband, and it was only after a petition for a receiver was filed when the attorneys who represented the bankrupt, represented also Mrs. Engram, his mother, and it was decided to ask for a year's support.

The report of the appraiser was prepared by the attorneys for the bankrupt on the same date that they were appointed by the Ordinary and the entire property, with the exception of a few acres of land upon the edge of the farm owned by Engram was set apart to the widow as a year's support at a valuation of $4,000.00 when the one-third interest according to the testimony of the bankrupt was worth $16,000.00.

An injunction was issued prohibiting Mrs. Engram from having the report of the appraisers made the judgment of the Court, and the said proceedings should, therefore, be further enjoined as being made for the sole purpose of hindering, delaying and defrauding the creditors of B. Sam Engram.

Judgment.

It is, therefore, the judgment of the Court, based upon the findings of fact, that the said Mrs. Mabel Dell Engram be restrained and enjoined permanently from proceeding any further with the year's support, which was all prepared some two years after the death of Samuel Franklin Engram, and which was being advertised in order that the thirty days might expire; and

It is the further judgment of the Court that the said proceedings were made for the purpose of hindering, defrauding and delaying the creditors of B. Sam Engram, and therefore, should be enjoined.

So Ordered, this 15 day of June, 1956.

E. R. JOHNSTON,
Referee in Bankruptcy, Middle District of Georgia.

Filed June 15, 1956.

(Title Omitted.)

To the Hon. E. P. Johnston, Esq., Referee in Bankruptcy:

This, the petition of Mrs. Mabel Dell Engram, respectfully represents:

1. Petitioner, who has been made a party in the above-stated matter, is aggrieved by an order of the Hon. E. P. Johnston, Esq., Referee in Bankruptcy, dated June 15th 1956, a copy of which is hereto attached and made a part hereof, and is marked "Exhibit A".

2. Said Referee erred in respect to said order in the following particulars:

(a.)

In failing and refusing to pass upon petitioner's motion to dismiss, in so far as she was concerned,

a petition filed in said matter by Wells Co-operative Dairies, Southland News Company, National Magazine Service, Inc., and Southern Druggists, and in failing to dismiss such petition insofar as your petitioner is concerned. A copy of the petition of Wells Co-operative Dairies et al., referred to above, is attached, made a part hereof, and marked "Exhibit B". A copy of the said motion to dismiss such petition, above referred to, is hereto attached, marked "Exhibit C".

(b.)

In retaining, and passing the order complained of upon said petition, for the reason that the District Court of the United States for the Middle District of Georgia, and said Referee, were without jurisdiction, as is set out in said motion to dismiss.

(c.)

In the first "findings of Fact" it is stated that the father of the bankrupt died leaving as his heirs at law his widow and a brother of the bankrupt, and that the bankrupt had a one-third interest in his father's estate. This is palpably error, as the bankrupt was an heir at law of his father. It is further error because a widow is not an heir at law of her husband. It is further error because an heir is entitled only to his part of the decedent's estate that remains after the expenses of administration, and a year's support for the widow is one of the necessary expenses of administration.

(d.)

The second finding of fact to the effect that the bankrupt recognized that he had a one-third interest in his father's estate, if true, is not binding upon the mother, the applicant for the year's support, and cannot be a basis for a holding respecting the validity of her application for a year's support.

(e.)

In the third finding of fact it is stated that the father of the bankrupt left certain bonds as a part of his estate, whereas the undisputed evidence is that all of such bonds were payable to petitioner and were no part of the estate of the bankrupt's father.

(f.)

The fourth finding of fact is to effect that the widow (petitioner here) collected rents for the years 1952, 1953, 1954 and 1955. This was erroneous, as the undisputed evidence showed that she had only collected rent for the years 1953 and 1954, and that it is still in the bank.

(g.)

The fifth finding of fact is wholly erroneous and at utter variance with the evidence. It states that your petitioner made application for temporary letters of administration upon her husband's estate in order to collect his insurance and lived out of said moneys. The evidence, undisputed, shows that there was only $2.000 insurance money and that it was payable di-

rectly to petitioner as beneficiary and was no part of her husband's estate.

(h.)

The sixth finding of fact is immaterial and irrelevant, because the undisputed evidence shows that the bankrupt, B. Sam Engram, had already been advanced far more than his part of the personal property of the estate of his father would have come to, the finding of fact alleging that petitioner had never accounted to the bankrupt for his part of the personal property of his father's estate.

(i.)

The tenth finding of fact that "the widow never figured on claiming a year's support out of the estate of her husband until after the filing of the petition for a receiver against B. Sam Engram (in the State Court), and it was only at the insistence of the attorney for said bankrupt that she made the claim" is utterly erroneous, and is unsupported by any evidence whatever, being a purely gratuitous statement on the part of the Referee.

(j.)

The statement in the eleventh finding of fact that appraisers were appointed on the recommendation of the attorneys for Mr. Engram is erroneous for the reason that there is no evidence to support it.

(k.)

The finding of fact numbered thirteen to the effect that the attorneys for Mrs. Engram and B. Sam En-

gram started a notice to be published "in Clay Court" is without any evidence whatever to support it and erroneous for that reason; and the statement in said numbered finding of fact that the action in applying for a year's support was "made solely to hinder, delay and defraud the creditors of B. Sam Engram who has a one-third interest in said estate of his father" is wholly erroneous and without any evidence to support it.

(l.)

The so-called finding of fact numbered fifteen is not a finding of fact at all, but a pure conclusion of law, and a wholly erroneous statement and conclusion of law.

(m.)

The statement in the sixteenth finding of fact that the appraisers set aside the entire state of the father of the bankrupt with the exception of a small tract on the edge of the house and lot tract, which was only worth a few hundred dollars is erroneous in that there is no evidence whatever of that alleged fact, the undisputed evidence showing that the father of the bankrupt owned over 200 acres of land and the year's support only set aside 58.08 acres, out of that amount.

(n.)

The finding of fact numbered eighteen to the effect that the widow had had at least two year's support out of her husband's estate is erroneous and wholly

at variance with the undisputed evidence, and the statement in said numbered finding of fact that the money the widow collected from the estate of her dead husband was spent by her as temporary administratrix and unaccounted for and was approximately the same amount as was set apart to her by the year's support, is wholly at variance with the evidence, the evidence showing that all the widow ever got from her dead husband's estate was the sum of $105.46, as appears from the evidence and from two condensed statements of the various checks and documents that were introduced in evidence, such condensed statements being likewise introduced in the evidence, and copies thereof being attached hereto, marked "Exhibited" and "Exhibit E", and made part hereof.

(o.)

The finding of fact numbered nineteen to the effect that widow had received rents from the property is contrary to the evidence and therefore erroneous as the undisputed evidence is that she had only received $1,000 as rent and that such sum had been deposited to her account as temporary administratrix as appears from the evidence and from "Rents collected from H. G. McKemie" shown under "receipts" on "Exhibit D".

(p.)

The twentieth finding of fact is so vague as to defy a traverse. It alleges in the most general terms that the father of the bankrupt (the husband of your petitioner) left "a substantial amount of cash, bonds,

lands, a home, a store building and fixtures, as well as furniture". The statement that he left a substantial amount of land is at variance with the previous finding that in taking 58.08 acres as a year's support the widow only left a small tract on the edge thereof; the statement that he left bonds is utterly at variance with the undisputed evidence that these bonds were no part of his estate; the statement that he left a substantial amount of cash is at variance with the undisputed evidence that he only left $782.48, which, as stated before, went to the widow as temporary administratrix and is shown as the first item on Schedule E. The money "in the post office" is similarly accounted for in the same schedule.

(q.)

The twenty first finding of fact is not supported by any evidence.

(r.)

The "Conclusions" of the Referee to the effect that Mrs. Engram applied for a year's support "for the deliberate purpose of hindering, delaying and defrauding" the creditors of her son B. Sam Engram is wholly unsupported by any evidence, as is the statement therein that "the entire property, with the exception of a few acres" was set apart as a year's support, whereas the undisputed evidence showed that only 58.08 acres out of more than 200 acres were so set apart.

(s.)

The judgment and order of the Referee are wholly beyond the powers of the Referee because he was

without jurisdiction to grant th injunction; and was without jurisdiction of the subject-matter involved in the petition therefor, or of the controversy posed by the petition.

Wherefore, petitioner prays that said order be reviewed and revised by a Judge in accordance with the provisions of the Act of Congress relating to Bankruptcy, that said order be reversed, that your petitioner's motion to dismiss the petition filed by Wells Dairies Co-operative et al., be granted and such petition dismissed; that the injunction sought in said petition be denied; and that the temporary restraining order or injunction heretofore granted by said Referee be dissolved; and that petitioner have such other and further relief as is just.

(S.) STONE & STONE,
(Stone & Stone),

P. O. Address:
Blakely, Ga.

W. L. STONE,
(W. L. Stone),

P. O. Address:
Blakely, Ga.

JOE M. RAY,
Petitioner's attorneys.

P. O. Address:
Cuthbert, Ga.

I, W. L. Stone, of the firm of Stone & Stone, of counsel of record for the petitioner in the above and foregoing petition for review, do hereby certify that I have mailed a copy of this petition to Hon. Walter Taylor, Trustee in Bankruptcy in said matter, at his regular Post Office address: Cuthbert, Georgia, prop-

erly addressed and with sufficient postage thereon. This the 24th day of June, 1956.

W. L. STONE,
(W. L. Stone).

Filed Aug. 20, 1956.

Exhibit "A"—Referee's Statement of Case and Findings and Order.

Exhibit "B"—Petition in Involuntary Bankruptcy of Wells Dairies et al.

Exhibit "C"—Mrs. Mabel Dell Engram's Objections to Temporary Restraining Order of Referee.

None of the above exhibits included here as they appear at other places in this record.

JOHN P. COWART,
Clerk.

"EXHIBIT D."

Estate of S. F. Engram

Receipts			
Balance in bank at date of death of S. F. Engram (Fort Gaines Banking Company)		$ 782.48	
Postal Savings		2,562.50	
Miscellaneous receipts: ...	$ 51.40		
	50.00		
	37.08		
	122.62		
	100.00	361.10	
Rents collected from H. G. McKemie:			
1954	400.00		
1953	600.00	1,000.00	
Rents collected from John Killingsworth for store, 10 mos. @ $8.00		80.00	
Sale of stock of goods to John Killingsworth ..		187.00	
Thomas Bankston, note paid		510.00	$ 5,483
Disbursements			
L. Sam Engram advances:			
By checks on Fort Gaines Banking Company ..	$ 3,171.40		
By checks on Coffee County Bank	1,625.00	$ 4,796.40	

Mabel Dell Engram advances			
By checks on Fort Gaines Banking Company ..			105.46
Marjorie Whidden, Fire Insurance Agent for premiums			
By check on Fort Gaines Banking Company ..	$	49.80	
By check on Coffee County Bank		89.64	139.44
Other Insurance			
Farmers Mutual .. $17.40			
17.40		34.80	34.80
Taxes Paid Tax Collector			
1953	$	11.99	
1954		9.87	
Intangible taxes		3.51	25.37
Slab for grave of S. F. Engram			327.29
			$ 5,428.76
			$ 54.32

"EXHIBIT E."

Filed Aug. 20, 1956.

Account at the Fort Gaines Banking Company, Ft. Gaines, Ga.

1953	Deposits	B. Sam Engram	Mabel D. Engram Other
June 10 Bal. account of S. F. Engram at time of his death ..	$ 782.48		
June 12 Postal Savings	2562.50		
Aug. 22 Reconstruction Finance Corporation		$ 150.00	
Sep. 5 F. & E. Hines ..			$ 10.00
Sep. 29 Beauford's Bootery			17.46
Oct. 4 Mrs. Alton Hobbs, Jr.			10.00
Oct. 5 Cash		285.00	
Oct. 14 Cash			10.00
Oct. 17 Cash		101.40	
Oct. 21 Cash		35.00	
Oct. 21	51.40		
Oct. 22 Cash			10.00
Nov. 3	50.00		
Nov. 4 Cash		25.00	
Nov. 4 The Hecht Company		200.00	
Nov. 4 Cash		50.00	
Nov. 18 Cash		1000.00	
Nov. 18 Cash		25.00	
Nov. 21 Cash		75.00	

1953	Deposits	B. Sam Engram	Mabel D. Engram	Other
Nov. 23 Dr. C. R. McKemie			23.00	
Nov. 19	37.08			
Nov. 25 Engram's Drug Shop		25.00		
Dec. 2 Cash		400.00		
Dec. 4 Marjorie Whidden, Agt. fire ins. premium				$ 49.80
Dec. 17	122.62			
Dec. 20 Mr. and Mrs. I. D. Engram			25.00	
Dec. 24 Cash		25.00		
1954				
Jan. 4 Cash		400.00		
Jan. 6	100.00			
Jan. 22 Marjorie Whidden, for slab for grave of Sam F. Engram				327.29
Jan. 23 Cash		25.00		
Feb. 2 B. Sam Engram		350.00		
	$3706.08	$3171.40	$105.46	$377.09
		105.46		
		377.09		
To balance		52.13		

(Title Omitted.)

To the Hon. T. Hoyt Davis and the Hon. William A. Bootle, Judges of said Court:

As Referee in Bankruptcy for the Middle District of Georgia, there was filed with me on June 24, 1956, a petition for review of an order dated June 15, 1956, the same having been filed within ten days as required by law.

An involuntary petition in bankruptcy was filed on March 30, 1955, by Wells Dairies Co-Operative, of Columbus, Georgia, Southland News Company of Chattanooga, Tennessee, National Magazine Service, Inc., of Newark, New Jersey, and Southern Druggists of Atlanta, Georgia, in which they asked that an adjudication in bankruptcy be had against B. Sam Engram; and

On March 31, 1955, a petition was filed by the same creditors for equitable relief, showing that an involuntary petition had been filed as of March 30, 1955, and the adjudication in bankruptcy of the said B. Sam Engram followed and under Section 70-c of the Bankruptcy Act the title of all of the property of the bankrupt, wherever located, vested in the trustee as of the date of the filing of the involuntary petition, to-wit: March 30, 1955, and the plaintiff also asked for an injunction against certain foreclosures and against Mrs. Mabel Dell Engram to enjoin her from proceeding with her application for a year's support.

On March 7, 1955, Mrs. Mabel Dell Engram, through her attorneys, Messrs. Stone and Stone, filed in the

Court of the Ordinary a petition for permanent letter of administration to issue to her upon the estate of Samuel Franklin Engram, her husband. Mrs. Mabel Dell Engram alleged that her husband departed this life on November 9, 1952, and upon her application she was appointed temporary administrator of the estate of her husband.

On March 7, 1955, Mrs. Mabel Dell Engram, filed in the Court of Ordinary, Clay County, an application for a year's support and asked for appointment of appraisers and on said application, appraisers were appointed, and on March 8, 1955, filed their report together with a descriptive plat of the property, which property was valued at $4500.00. Under the Georgia Law a petition has to be filed for a year's support and petition for the appointment of appraisers, and appraisers have to be notified and have to be sworn after being notified; and they had to make the appraisement, then get a surveyor and survey the property, make a plat, etc. The petition was filed on the 7th of March, and the appraisers, with all of the above requirements, and the getting of a surveyor and surveying the property, did this and filed their report the next day.

It seems almost impossible for an application to be made, appraisers appointed and notified and sworn, and view the property, and have a surveyor to survey the property, and get all this filed within a period of one day.

Notices of the report had to be advertised through the newspaper once a week for four weeks, and the administratrix served, so that persons interested could

file objections by the first Monday in April, 1955. There was no provision for getting notices to creditors of an heir at law.

A temporary injunction was granted prohibiting Mrs. Mabel Dell Engram from making the report of the appraisers the judgment of the Court. Under the Bankruptcy Law the title to the interest of B. Sam Engram could not be divested by the application of Mrs. Mabel Dell Engram, his mother, claiming a year's support in the property. The title of B. Sam Engram's interest had already vested in the trustee as of March 30, 1955, the date of the filing of the involuntary petition, under the provisions of Section 70 and sub-sections under 70.

I duly filed my findings of fact, conclusions and judgment, and to this a petition for review was filed.

The question presented in this case is as follows;

B. Sam Engram, the bankrupt, and his mother, Mrs. Mabel Dell Engram, and a brother, were the sole heirs at law of Samuel Franklin Engram. Samuel Franklin Engram died on November 9, 1952, leaving a home, store property, and $2500.00 in savings account, and bank account of over $700.00 and bonds.

The widow, Mrs. Mabel Dell Engram, made application for temporary administration of the estate, and it was granted, and she collected money from the bank and from the post office, and so far as the record discloses, used it.

In addition to this, she collected the rent for the property, and no application for a year's support was made, nor was there any permanent letter of administration issued. B. Sam Engram was in the drug business at Cuthbert, Georgia, and was getting in bad shape.

There was no will on the estate of Samuel Franklin Engram, so that the parties entitled to the property were the widow and two sons, one of whom was the bankrupt.

A petition for receiver was filed in February, 1955, after a conference with B. Sam Engram, the bankrupt, and this was followed by the creditors making application for bankruptcy on March 30, 1955, but B. Sam Engram and the widow had notice in February that an effort was being made to put B. Sam Engram in the hands of a receiver.

On March 7, 1955, Mrs. Mabel Dell Engram made application for permanent letters of administration to issue on the estate, and at the same time she filed an application for a year's support out of the estate of her deceased husband, and appraisers were appointed, and on the same date the appraisers were appointed and on March 8, 1955, they filed their report with the Court of Ordinary setting apart to the widow the real estate; that is, the home and all the houses and all the real estate except acreage on the fringers around the houses—the plat showing about 48 acres was set apart, which was all of the buildings, etc.

On March 31st a temporary restraining order was granted on the application of creditors, prohibiting Mrs. Mabel Dell Engram from proceeding any further with the year's support, for the reason that an involuntary petition had been filed against B. Sam Engram, on which an injunction was asked and the interest of B. Sam Engram was therefore vested in the Bankruptcy Court, pursuant to Section 70 of the Bankruptcy Act.

The mother of the bankrupt had the property since November 9, 1952, and collected several thousand dollars in cash from the bank and the post office, and the title to the property vests in the trustee as of the date of the filing of the involuntary petition, which was on March 30, and the title of the trustee was that of a creditor holding a lien by legal or equitable proceedings, pursuant to Section 70 of the Bankruptcy Act.

This case is not a case where creditors are seeking to deprive the widow of a claim, but is a case where the widow, the mother of the bankrupt, is seeking to help her son who was in business and is now a bankrupt, and she is seeking to keep the property, so that the creditors of her son, the bankrupt, will not be benefitted by his inheritance.

The widow upon the death of her husband in 1952 got temporary letters of administration to issue, so that she could collect the money in the bank and in the post office, and other property, for the benefit of the estate of her deceased husband. She did not seek any claim for a year's support in 1952, and it was only after the failure of her son, did she file her

petition for a year's support and for permanent letters of administration.

The finding and the judgment of the Court had the effect of overruling the motion of Mrs. Engram for a dismissal of the suit.

The findings of fact show that the interest of B. Sam Engram, being one-third interest, was worth $15,000.00. Can this be defeated by a widow who was some three years making application for a year's support, and making the application which would be of benefit of her son who is in bankruptcy, and the appraisers setting apart property, one-third interest of which is worth $15,000.00, and they were putting a valuation thereon of $4500.00 for the entire property?

Now, therefore, pursuant to Section 30-A (8) of the Bankruptcy Act, as amended, the Referee in Bankruptcy files this his certificate on the petition for review and on the order made by him, together with the statements presented; the findings of fact and conclusions, the order in the proceedings, together with the order enjoining Mrs. Mabel Dell Engram from proceeding any further with her year's support, our of her deceased husband's estate.

I am attaching the following papers:

1. The original involuntary petition filed against the bankrupt.

2. The answer of the bankrupt wherein he denied he was insolvent.

3. The petition of the bankrupt for adjudication filed after the service of the involuntary petition upon him, and the answer filed.

4. The order making the trustee a party plaintiff in the suit of creditors for injunction.

5. The petition filed by the creditors to enjoin certain proceedings and especially Mrs. Mabel Dell Engram from proceeding any further without the year's support.

6. The answer and motion to dismiss proceedings.

7. The application of the year's support and the report showing the date.

8. The report of the appraisers and the plat attached showing the property that was set apart.

9. All of the evidence that was introduced and reported in all hearings as shown by stenographer's report.

10. The signed statement of the bankrupt showing the value of the estate of his father.

I am also attaching to this certificate the original brief furnished by the counsel for Mrs. Mabel Dell Engram, and I am furnishing to said counsel my certificate of said petition for review.

In Witness Whereof, I hereunto set my hand this 14 day of August, 1956.

E. P. JOHNSTON,
Referee in Bankruptcy, Middle District of Georgia.

Filed Aug. 20, 1956.

Filed at 11:00 A. M. Jan. 19, 1957.

In the United States District Court for the Middle District of Georgia, Columbus Division.

In the Matter of:
B. Sam Engram, Bankrupt.
#2313 & 2316.

Bootle, District Judge:

The petition for review, filed by Mrs. Mabel Dell Engram, the mother of the bankrupt, presents the question whether the Referee erred in permanently enjoining her from proceeding with her application in the Court of Ordinary of Clay County, Georgia, for a statutory twelve months support out of the estate of her deceased husband, bankrupt's father.

The record shows that bankrupt's father, Samuel Franklin Engram, died intestate on November 9th, 1952, leaving surviving him his widow, Mrs. Mabel Dell Engram, and two sons, one of whom is the bankrupt. On May 18th, 1953, the widow was appointed temporary administratrix. On March 7th, 1955, she made application for appointment as permanent administratrix. On March 5th, 1955, she made applica-

tion to the Court of Ordinary for a statutory twelve months support under the provisions of Section 113-1002 of the Code of Georgia Annotated.

On March 30th, 1955, an involuntary petition in bankruptcy was filed against B. Sam Engram by three of his creditors and on the following day, March 31st, 1955, the same creditors filed in this Court their petition for equitable relief alleging that B. Sam Engram had been adjudicated a bankrupt and praying that bankrupt's mother, Mrs. Mabel Dell Engram, be enjoined from proceeding further with her application for a twelve months support. After the appointment of the Trustee in bankruptcy, he was made a party plaintiff in said petition for equitable relief and adopted the petition of the creditors. In the meantime, and, on March 8th, 1955, the appraisers, appointed by the Court of Ordinary for the purpose, filed their report with said Court setting aside certain real estate and household furniture as being necessary for the support and maintenance of said widow and valued at $4,500.00. In accordance with the regular procedure, the Court of Ordinary cited all persons concerned to show cause before the Court of Ordinary on the first Monday in April, 1955, why said application should not be granted.

Upon the filing of this ancillary petition for injunction, and on March 31st, 1955, this Court referred the same to the Referee "to take such further proceedings therein as are required and permitted by the Act of Congress relating to bankruptcy." The widow filed her motion to dismiss said ancillary petition contending that this Court lacks jurisdiction to enjoin her from proceeding with her petition for a year's

support out of the estate of her deceased husband because:

"a. In so far as the property inherited by the bankrupt B. Sam Engram from his father is concerned, this Court can only deal with the title of the bankrupt and that title is inferior to a Year's Support for his mother out of his father's estate;

"b. The creditors of an heir cannot contest with the widow of the heir's intestate her right to a Year's Support out of the estate of said intestate;

"c. This Court is without jurisdiction to determine whether or not Mrs. Mabel Dell Engram should be awarded a year's support, and whether or not she had already received such a support at the time she filed her petition therefor;

"d. As appears from the allegations of the petition, the Year's Support had already been set aside to Mrs. Mabel Dell Engram at the time of the filing of the petition of Well Dairies Co-operative et al., in this Court, and there is no further act or thing which she can do in connection with the granting of the Year's Support, and therefore no act or conduct that can be enjoined."

The Referee never formally acted upon this motion to dismiss, but treated his findings of fact, conclusions of law and judgment, hereinafter mentioned, as having the effect of overruling said motion to dismiss. After a number of hearings, the Referee, on June 15th, 1956, made his findings of fact, finding the facts as hereinabove stated and additionally that bankrupt's

father left an estate of over 200 acres of land with a house and certain moneys and bonds; that the widow moved from said home after the death of her husband, but collected whatever rents there were for the years 1952 through 1955; that she made no application for a year's support prior to March 5th 1955; that her application for appointment as temporary administratrix was for the purpose of collecting the proceeds of insurance, etc., and that she lived out of the moneys so collected; that she has made no accounting to the two sons for the personal property of the estate; that bankrupt was insolvent at the time when a petition for a receiver had been filed against him in the Superior Court of Randolph County on September 11th, 1955; that the widow never figured on claiming a year's support until after the filing of said petition for a receiver and that it was only at the insistence of the attorneys who represent both her and the bankrupt that she made a claim; that said application for twelve months support was made solely to hinder, delay and defraud the creditors of bankrupt who had a one-third interest in said estate of his father; that the widow, by her failure to claim a year s support earlier, is estopped from claiming it now to defeat bankrupt's creditors; that the appraisers set aside the entire estate of bankrupt's father with the exception of a small tract on the edge of the house and lot tract and that the part left was of only a few hundred dollars value (the evidence shows that the deceased owned something over 200 acres and that the appraisers set apart 58.08 acres, which, however, contained the improvements); that the moneys collected by the widow were spent by her as temporary administratrix and were unaccounted for and was approximately the same amount as set apart to her

and that she had had at least two years support out of the estate. The Referee then concludes as a matter of law that the application for the year's support was made for the deliberate purpose of hindering, delaying and defrauding bankrupt's creditors and, accordingly, he entered a judgment enjoining the widow permanently from proceeding any further with her year's support.

In the opinion of this Court the widow's motion to dismiss the ancillary petition for equitable relief should have been sustained, that the Referee erred in not sustaining it and that it is not necessary for the Court to express any opinion with respect to his findings of fact and other conclusions of law.

Under the rules of inheritance in Georgia the widow and two sons were entitled to inherit equally the decedent's estate. Georgia Code Annotated 113-903 (3) (4). Upon decedent's death the title to his real estate vested immediately in his widow and two sons "subject to be administered by the legal representative . . . for the payment of debts and the purposes of distribution." Georgia Code Annotated 113-901. The title to personalty vested in the administrator for the benefit of heirs and creditors. Georgia Code Annotated 113-901. The widow, however, was entitled also to a twelve months support which ranks "among the necessary expenses of administration, and to be preferred before all other debts, except as otherwise specially provided . . ." Georgia Code Annotated 113-1002. As the widow's attorneys frankly concede in their brief "of course, if Mrs. Engram had received one year's support she would not be entitled to take another under the statute." Moreover, "the laws of

Georgia allow a widow one year's support for herself and children out of the estate of her deceased husband; . . . the laws do not contemplate that she shall live at the homestead and consume the provisions belonging to the estate and have a year's support in addition to what she may thus have consumed, allowed to her; . . . in all application for a year's support to be assigned her, she must be held chargeable with the value of what she had previously consumed." Wells v. Wilder, 36 Ga. 194. See also Hill v. Hill, 55 Ga. App. 500, 502 and Smith v. Smith, 73 Ga. App. 567, 572. Also, "Long lapse of time between the death of the husband and the widow's application for year's support may be considered by the ordinary in connection with other facts tending to show that the widow had received a support from the estate or had waived it expressly or impliedly. And in passing upon the application the ordinary should give weight to evidence as to such facts in determining the amount to be granted, or whether the application should be wholly refused." Federal Land Bank v. Henson, 166 Ga. 857 (5).

The fundamental rule of law applicable here is of such long standing that in the case of Peck, et al., v. Jenness, et al., reported in 7 Howard 612, 48 U. S. 612, 12 L. Ed. 841, it was remarked, "It is a doctrine too long established to require a citation of authorities . . ." The rule of law referred to and the full quotation are:

"It is a doctrine of law too long established to require a citation of authorities, that, where a Court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its de-

cision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other Court; and that, where the jurisdiction of a Court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another Court. These rules have their foundation, not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one, if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice. In the case of Kennedy v. The Earl of Cassilis, Lord Eldon at one time granted an injunction to restrain a party from proceeding in a suit pending in the Court of Sessions of Scotland, which, on more mature reflection, he dissolved; because it was admitted, if the Court of Chancery could in that way restrain proceedings in an independent foreign tribunal, the Court of Sessions might equally enjoin the parties from proceeding in chancery, and thus they would be unable to proceed in either Court. The fact, therefore, that an injunction issues only to the parties before the Court, and not to the Court, is no evasion of the difficulties that are the necessary result of an attempt to exercise that power over a party who is a litigant in another and independent forum."

Other illustrative cases are Kline v. Burke Construction Co., 260 U. S. 226, 67 L. Ed. 226 and Bryan v. Speakman, 5th Cir., 53 F. 2d. 463 (4). The latter case holds that where a bill for foreclosure and receivership was sanctioned and filed in State Court,

that Court had custody of mortgaged property notwithstanding it had not yet appointed its receiver when bankruptcy receiver took possession. See also Lion Bending and S. Co. v. Karatz, 262 U. S. 77, 67 L. Ed. 871.

It was said in International Bank v. Sherman (1880), 101 U. S. 403, 406, 25 L. Ed. 866 and in Mueller v. Nugent (1901), 184 U. S. 1, 14, 46 L. Ed. 405, that the filing of a petition in bankruptcy is a caveat to all the world, and in effect an attachment and injunction. As was held, however, in the case of In Re Dayton Coal and Iron Company, 291 Fed. 390, 396, "This remark, however, must be taken with reference to the facts then before the Court and 'not as applicable to all intents and purposes'. York Mfg. Co. v. Cassell, 201 U. S. 344, 353, 26 Sup. Ct. 481, 50 L. Ed 782; Jones v. Springer, 226 U. S. 148, 155, 33 Sup. Ct. 464, 57 L. Ed. 161. Thus taken, its effect is: That the filing of the petition so impounds the property of the debtor then in his possession, that, as held in Bank v. Sherman, those who deal with it between the filing of the petition and the adjudication, do so at their peril, and cannot acquire title thereto by transfer from the debtor; and that, as held in Mueller v. Nugent, the bankruptcy Court may summarily compel its surrender by one holding it merely as agent of the debtor. Babbitt v. Dutcher, 216 U. S. 102, 30 Sup. Ct. 372, 54 L. Ed. 402, 17 Ann. Cas. 969." For a similar narrowing interpretation of the "caveat" language of the Supreme Court, see Linstroth Wagon Co. v. Bailew, 149 Fed. 960, 965.

It is not to be gainsaid that a Court of the United States may in accordance with 28 U. S. C. A. 2283

grant an injunction to stay proceedings in a State Court where necessary in aid of its jurisdiction or to protect or effectuate its judgment. This is a jurisdiction, however, which, under the authorities, is to be cautiously exercised and, in the words of the statute, only when "necessary in aid of its jurisdiction, or to protect or effectuate its judgment." In the recent case of Callaway v. Benton, 336 U. S. 132, 93 L. Ed. 553, the Supreme Court held that in the Central of Georgia reorganization plan the question whether the acceptance of the offer by the Southwestern Railroad Company required a unanimous vote of its stockholders was for the State Court to decide and that the United States Court could not restrain a State Court action brought to enjoin the proposed sale. The Court said: "There can be no question, however, that Congress did not give the bankruptcy Court exclusive jurisdiction over all controversies that in some way affect the debtor's estate." At page 142 U. S., page 561 L. Ed. Moreover, the Court pointed out in footnote 11 that even if the controversy had involved property within the exclusive jurisdiction of the bankruptcy Court, that court could, in its discretion, postpone action pending adjudication of the question in the State Court but withheld judgment as to whether, under such circumstances the bankrupty Court would have had to withhold judgment. The Callaway case is right much in point factually The Central of Georgia was being reorganized in bankrupty Court. It was the owner of a leasehold interest on property of the Southwestern Railroad Company. It did not own the reversion. The reorganization plan extended to Southwestern the privilege of selling the reversion to the Central's trustee, if it so desired. The question arose in the State Court as to whether Southwestern could

make such sale under its charter absent the unanimous approval of its stockholders. Such question to an extent and in some way affected the Central's estate in bankruptcy, but not sufficiently, under the Supreme Court's holding, to permit the bankruptcy Court to enjoin the State Court action. In the instant case, it must be remembered that the decedent's estate is not in bankruptcy. The mother is not in bankruptcy. The other brother is not in bankruptcy. The only bankrupt is B. Sam Engram, and the only property he owns, insofar as the immediate controversy is concerned, is a one-third undivided interest in the decedent's estate and that interest is subject to the expenses of administration, chief among which is a year's support for the widow, assuming that she has not already received the same or in some way lost her right thereto.

When the Callaway case was in the United States Court of Appeals for the Fifth Circuit en route to the Supreme Court, the Court of Appeals convincingly wrote: "We think the bankruptcy Court erred in attempting to exercise exclusive jurisdiction over property which the debtor did not own and upon which it had no lien. The debtor was in actual possession of the tangible property leased by it, but it held the same as lessee, not as owner in fee." Benton v. Callaway, 5th Cir., 165 F. 2d. 877, 880.

The respective jurisdictions of State Courts and bankruptcy Courts are exhaustively treated in 28 Am. Jur., page 399, Injunctions, Section 216, et seq.; 6 Am. Jur., page 727, Bankruptcy, Section 297, et seq., including Sections 300 and 301, and in 8 Corpus Juris Secundum, page 924, Bankruptcy, Section 261, et seq.

A proceeding in a State Court to ascertain all of the debts and administer all of the property of an in-

solvent person, which is the essence of bankruptcy, or a proceeding which, though having a lesser scope, will be governed by an application of the Bankruptcy Act on the occurrence of bankruptcy, as where transfers and liens otherwise valid are nullified by bankruptcy, is suspended entirely by bankrupcty though prior in time to bankruptcy. But if the proceeding in the State Court is to try title or assert a lien against specific property not affected by bankruptcy, the State Court has priority of jurisdiction as against the bankruptcy Court. In Re Moore, D.C. N.D. Ga., 42 F. 2d. 475. See also Scott v. Goodman, D.C. N.D. Ohio, 25 F. 2d. 175. Similarly, a State Court suit pending at the onset of bankruptcy for recovery by a defrauded vendor of property purchased on credit by the debtor through a fraudulent credit statement can proceed unaffected by bankruptcy. Lindstroth Wagon Co. v. Ballew, supra. Analogously, though bankruptcy does not oust State Court of jurisdiction acquired in a receivership proceeding filed within four months of bankruptcy to enforce a lien more than four months old and hence not affected by bankruptcy, the bankruptcy Court has summary jurisdiction to order the State Court receiver to turn over to the bankruptcy trustee excess funds left in the State Court receiver's hands after satisfaction of the lien. Atlanta Flooring and Insulation Co. v. Russell, 5th Cir., 145 F. 2d. 493, petition for rehearing denied 146 F. 2d. 884; Atlanta Flooring and Insulation Co. v. Oberdorfer Insurance Agency, 5th Cir., 136 F. 2d. 457.

The reasoning in the above cited decisions applies to the instant case in that a widow's right to a twelve months support has priority over the bankrupt's claim as an heir. The bankrupt's inheritance was subject to the widow's claim for a year's support and re-

mains subject thereto both before and after bankruptcy.

This case may be likened also to a case where only one of three partners is adjudicated a bankrupt. Such an assumed case is covered explicitly by Section 5 (i) of the Bankruptcy Act, which says that in such case, "the partnership property shall not be administered in bankruptcy, unless by consent of the general partner or partners not adjudged bankrupt; but such general partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit and account for the interest of the general partner or partners adjudged bankrupt." To the same effect, Collier on Bankruptcy, Volume 1, page 741 says, "The only interest that the trustee of an individual bankrupt partner has in partnership property in the hands of the unadjudicated partner is the right to demand and receive the partner's interest, if any, in the firm assets after an accounting and payment of debts out of property belonging to the partnership." See also Marnet Oil & Gas Co. v. Staley, 5th Cir., 218 Fed. 45 (3).

The Court of Ordinary is a Court of general jurisdiction Stringfellow v. Stringfellow, 112 Ga. 494, 495. The Court of Ordinary of Clay County, with the right of appeal from it to the Superior Court of said County, is the proper Court to administer the estate of the bankrupt's deceased father. As a part of that administration that Court can properly determine all questions raised and to be raised in reference to the widow's claim for a twelve months support. Said Court may have other questions of administration to resolve, for instance, whether or not the bankrupt has received any advancements within the meaning of Section 113-1013 of the Georgia Code Annotated, or is

simply a debtor of the estate, and, in that connection, whether an administrator holding a claim against a bankrupt heir may enforce it only in the Court of bankruptcy, and whether an indebtedness of a bankrupt to the estate of his intestate father can, or cannot, be set off against his interest as an heir in real estate. See In Re Von Ruden, D.C. D. Minnesota, 22 F. 2d. 860. But these are questions which may arise in the State Court and with which this Court is not presently involved. The bankruptcy trustee, if he is so minded, may with authorization from this Court intervene in the State Court proceedings, he being a privy of the bankrupt heir. (McGahee v. McGahee, 204 Ga. 91—96), and, as Judge Foster stated in the case of McLoughlin v. Knop, D.C. E.D. La., 214 Fed. 260, 263, "I have no doubt the State Court will give due consideration to his contentions . . and will ultimately decide all questions properly according to the law and evidence of the case." In the meantime, the final administration of the bankruptcy estate will have to await the administration of the bankrupt's father's estate with respect to personally belonging to said decedent's estate and with respect to realty also, unless with respect to the real estate the Referee should decide that the bankrupt's interest therein may and should be sold subject to the right of the administratrix therein for administration purposes, as was held in the case of In Re Von Ruden, supra.

The case of Byers v. McAuley, 149 U. S. 608, 37 L. Ed. 867, is doubly apposite holding both that where property is in the possession of one Court, of competent jurisdiction, such possession cannot be disturbed by process out of another Court and that a Federal Court has no original jurisdiction in respect to the administration of a deceased person, and it

cannot, by entertaining jurisdiction of a suit against the administrator, draw to itself the full possession of the estate, or the power of determining all claims against or to it.

Moreover, allegations of fraud, mismanagement or collusion on the part of the administratrix in the State Court matter does not affect the question of interference with the State Court's jurisdiction. Muffler v. Petticrew Real Estate Co., 6th Cir., 132 F. 2d. 479 (7).

Perhaps the case nearest in point is In Re Naslund, D.C. W.D. Wash. N.D., 6 F. Supp 109, holding that where a husband, who was the principal beneficiary of the estate of his deceased wife, was adjudged a bankrupt pending the administration of his wife's estate in the State Probate Court, the latter Court was not ousted of the possession of the wife's estate by the bankruptcy of the husband, but retained jurisdiction to make disposition of the assets of the wife's estate according to law. The cases of Hull v. Dicks, 235 U. S. 584, 59 L. Ed. 372, and Seiden v. Southland Chenilles', 5th Cir., 195 F. 2d. 899, are of particular interest in that they deal with bankruptcy and with the widow's twelve months support under the Georgia statute. These cases hold nothing contrary to In Re Naslund, supra, and are clearly distinguishable in that in each case the bankruptcy Court had sole possession of the decedent's estate and were in no manner interfering with the jurisdiction or possession of State Courts. In Re Rhodes, D.C. N.D. Ohio, 190 Fed. 117 holds that a homestead set apart in a State Probate Court to one who later becomes a bankrupt is binding upon the bankruptcy Court. Many of the cases herein cited are discussed in the case of In Re Burden, D.C. D. Nebraska, 83 F. Supp. 416,

which holds that under the modernization and revision of the Bankruptcy Act, effected September 22nd, 1938, the Referee has summary jurisdiction to cancel execution liens obtained against an insolvent debtor within four months next prior to the filing of the petition in bankrupty through judgment and the issue and levy of execution in the State Court.

For the reasons herein stated the judgment of the Referee that Mrs. Mabel Dell Engram be restrained and enjoined permanently from proceeding any further with the year's support is hereby reversed and upon return of the matter to him he is directed to enter an order sustaining her motion to dismiss the ancillary petition for injunction insofar as it seeks to enjoin her from proceeding further with the application for twelve months support.

This 19 day of January, 1957.

W. A. BOOTLE,
United States District Judge.

Filed Jan. 19, 1957.

NOTICE OF APPEAL.

In the United States District Court for the Middle District of Georgia, Columbus Division.

In the Matter of:
B. Sam Engram, Bankrupt.

Judgment Filed Jan. 19, 1957. Nos. 2313 and 2316.

Notice is hereby given this 1st day of February, 1957, that Walter E. Taylor, Jr., trustee in bankruptcy for B. Sam Engram, bankrupt, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the judgment of this Court entered on the 19th day of January, 1957, in favor of Mrs. Mabel Dell Engram, defendant in the ancillary suit for injunction, etc. against the trustee of B. Sam Engram and other petitioners.

T. T. MOLNAR,
(T. T. Molnar),
Attorney for the trustee.

P. O. Address:
Cuthbert, Georgia.

Filed Feb. 4, 1957.

DESIGNATION OF ERROR.

(Title Omitted.)

The trustee, having filed a notice of appeal in the above stated matter to the United States Court of

Appeals for the Fifth Circuit, designates herewith as error the judgment and decree of the United States District Judge, in which the judgment of the Referee in Bankruptcy was reversed, and says that the Judge erred in reversing said judgment of said Referee in Bankruptcy and sustaining a motion of Mrs. Mabel Dell Engram to dismiss the original petition, and that said Judge should have sustained said Referee on each and every point.

T. T. MOLNAR,
(T. T. Molnar),
Attorney for the trustee.

P. O. Address:
Cuthbert, Georgia.

Filed Feb. 4, 1957.

MOTION AND ORDER GRANTING STAY.

(Title Omitted.)

Now comes the trustee in the above named and stated matter and, having filed with the District Court a notice of appeal to the United States Court of Appeals, a designation of the record and a designation of error, now, prays that the Honorable Court grant supersedeas and an order staying the operation and enforcement of the order of this Court until such time as will enable the United States Court of Appeals, Fifth Circuit, to review and determine the within cause, and until further orders of this Court; further, that this Honorable Court grant appropriate orders relieving petitioner, an officer of this Court as such

trustee, from posting an appeal bond and also from posting a supersedeas bond.

T. T. MOLNAR,
(T. T. Molnar).
Attorney for the trustee.

P. O. Address:
Cuthbert, Georgia.

All Prayers of the foregoing Motion are hereby granted. This Feb. 4, 1957.

W. A. BOOTLE,
U. S. District Judge.

Filed Feb. 4, 1957.

(Title Omitted.)

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Fifth Circuit, with reference to the notice of appeal heretofore filed by the trustee, plaintiff, in the above cause, transcript of the record in the above cause, prepared and transmitted as required by law and the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to wit:

1. Petition in involuntary bankruptcy filed March 30, 1955, designated as Wells Dairy Co-Operative, et al., vs. B. Sam Engram.

2. Ancillary equitable petition of Wells Dairies Co-Operative, et al., against Mrs. Mabel Dell Engram et al., dated March 31, 1955.

3. General order of U. S. District Judge referring this matter to the Referee of Bankruptcy, dated March 31, 1955.

4. General order and rule nisi in the within case issued by the Referee in Bankruptcy, dated March 31, 1955.

5. Order of the Referee in Bankruptcy amending rule nisi and temporary restraining order, dated May 2, 1955.

6. Motion of Mrs. Mabel Dell Engram to dismiss the petition for lack of jurisdiction, dated May 31, 1955.

7. Order of the Referee in Bankruptcy appointing Walter E. Taylor Jr. trustee for B. Sam Engram, dated May 31, 1955.

8. Intervention of Walter E. Taylor, Jr., trustee for B. Sam Engram in the within cause and order of the Referee in Bankruptcy allowing him to become party plaintiff, dated July 1, 1955.

9. Judgment of the Referee in Bankruptcy in the within cause, dated June 15, 1956, findings and conclusions.

10. The petition of Mrs. Mabel Dell Engram for review, served June 24, 1956, omitting so much of the Exhibits as have been included in the within designation of the record.

11. Judgment of the United States District Judge reversing the judgment of the Referee in Bankruptcy, dated January 19, 1957.

12. Notice of appeal, with date of filing.

13. Assignment of errors.

14. Petition for supersedeas and judgment thereon.

15. This designation of record.

T. T. MOLNAR,
(T. T. Molnar),
Attorney for the trustee.

P. O. Address:
Cuthbert, Georgia.

Filed Feb. 4, 1957.

CLERK'S CERTIFICATE.

In the District Court of the United States for the Middle District of Georgia, Columbus Division.

In the Matter of:
B. Sam Engram, Bankrupt.

W. E. Taylor, Jr., Trustee of B. Sam Engram, Bankrupt, Appellant,
vs.
Mrs. Mabel Dell Engram, Appellee.

Bankruptcy Nos. 2312 and 2316.

United States of America,
Middle District of Georgia.

I, JOHN P. COWART, Clerk of the United States District Court in and for the Middle District of Georgia, do hereby certify that the foregoing and attached 56 pages contain a true, full, complete and correct copy of the original record and all proceedings had in the above stated cause, as specified in the designation of contents of record on appeal of counsel herein and as the same remains of record and on file in the Clerk's Office of the said District Court at Columbus, Georgia.

In Witness Whereof, I have hereunto set my hand and the official Seal of the said District Court at Macon, Georgia, this the 18th day of February, 1957.

JOHN P. COWART,
(John P. Cowart),
Clerk, U. S. District Court,
Middle District of Georgia.

(Seal)

No. 747

Office - Supreme Court, U.S.
FILED
JAN 27 1958
JOHN T. FEY, Clerk

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT

No. 16,560

WALTER E. TAYLOR, JR., TRUSTEE IN BANKRUPTCY FOR B. SAM ENGRAM, BANKRUPT,

Appellant,

versus

MRS. MABEL DELL ENGRAM,

Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

MOTION FOR RE-HEARING.

T. T. MOLNAR,
Counsel for Appellant.

Post Office Address:
Post Office Box 100,
Cuthbert, Georgia.

U.S. COURT OF APPEALS
FILED
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UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT.

No. 16,560.

WALTER E. TAYLOR, JR., TRUSTEE IN BANKRUPTCY FOR B. SAM ENGRAM, BANKRUPT,
Appellant,

versus

MRS. MABEL DELL ENGRAM,
Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

MOTION FOR RE-HEARING.

Appellant, Walter E. Taylor, Jr., trustee in Bankruptcy for B. Sam Engram, respectfully moves the Court for a re-hearing on the following grounds:

1.

During the argument in the within cause, the Court expressed an opinion that all cases in probate court are in rem and counsel for the trustee stated that a year's support seems to be a mixed action, in personam and in rem.

The Court wholly overlooked deciding this question and the question is pertinent to the matter before the Court and is material in the decision of the appeal.

2.

During the argument in the within cause before the Court of Appeals, the Court expressed an opinion that the Act of June 25, 1948—62 Stat. 968, 28 U.S.C.A. 2283 applies to cases in personam only and do not apply to cases in rem.

The Court wholly overlooked this question and failed to decide it although it is material and vital to the pending cause.

3.

The Court overlooked the cases of *Constance vs. Harvey*, 215 Fed. 2nd 571, certiorari denied 348 U.S. 913 and *Conti vs. Volper*, 229 F 2nd 317, wherein Section 70(c) of the Bankruptcy Act is considered, especially the Strong-Arm Clause thereof. If the trustee stands in the place of lien creditors, he has such interest in a year's

support action as will make it his duty to defend the property in the custody of the Bankruptcy Court.

Respectfully submitted,

.....

T. T. MOLNAR,
Counsel for Appellant.

Post Office Address:
Post Office Box 100,
Cuthbert, Georgia.

I, T. T. Molnar, counsel for Appellant, do hereby certify that I have carefully read the decision of the Court of Appeals in the within cause and that in my opinion the Motion for a Re-Hearing is meritorious and the same is not filed for delay only.

T. T. MOLNAR.

CERTIFICATE OF SERVICE.

This is to certify that a copy of this Motion for Re-Hearing was served on W. Lowry Stone, Esq. and Joe M. Ray, Esq., Counsel for Mrs. Mabel Dell Engram, Appellee, by mailing the same to them, each at his Post Office address: Blakely, Georgia and Cuthbert, Georgia, respectively, through the United States mail, in envelopes properly stamped for the transmittal of the same and properly addressed as above stated, this .... day of ..... 1957.

.....

Office - Supreme Court, U.S.
FILED
JAN 27 1958
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 747

WALTER E. TAYLOR, JR., Trustee in Bankruptcy for B. SAM ENGRAM, Bankrupt,

Petitioner,

versus

MRS. MABEL DELL ENGRAM,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

T. T. MOLNAR,
Cuthbert, Georgia,
Counsel for Petitioner.

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an appendix, designated as Appendix I, filed with this petition. The United States Court of Appeals adopts PER CURIAM the opinion of the District Judge, filed January 19, 1957, which is not yet reported and for convenience is printed in an appendix, designated as Appendix II, filed with this petition.

BASIS OF JURISDICTION.

Jurisdiction is invoked under Section 240(a) of the Judiciai Code as amended, United States Code 28:347(a), 43 Stat. 938.

The judgment and opinion of the Court of Appeals for the Fifth Circuit were filed October 22, 1957; petition for rehearing was filed November 21, 1957; rehearing was denied without opinion on December 10, 1957. Application for stay of mandate pending application in this Court for writ of certiorari was made on December 26, 1957; and order staying the mandate for thirty days pending the application for writ of certiorari in this Court was entered on December 26, 1957.

QUESTIONS PRESENTED.

The Court of Appeals affirmed the judgment of the United States District Court for the Middle District of Georgia, which reversed the judgment and decree of the Referee in Bankruptcy, proceeding in this matter by general reference from the District Court. The Referee in

Bankruptcy permanently enjoined the prosecution of a proceeding instituted by Mrs. Mable Dell Engram, Respondent, mother of the bankrupt, in the Court of Ordinary of Clay County, Georgia, the same being a court of probate, for the setting aside twelve months support to Respondent, as the widow of Samuel Franklin Engram, out of the estate of the deceased who died intestate. The bankrupt, B. Sam Engram, being an heir of said Samuel Franklin Engram, the Referee in Bankruptcy held that the proceedings commenced by Respondent in the State Court have been instituted as a result of a collusion between Respondent, and her son, the bankrupt, for the sole and only purpose of hindering, delaying and defrauding the creditors of said bankrupt, thus depriving the courts of the United States of their jurisdiction and the effect of their judgment. Such proceedings, if successful, would effectively place the assets of the bankrupt beyond the reach of the Court and the creditors.

The District Judge reversed the Referee in Bankruptcy and directed said Referee to sustain a motion by Respondent to dismiss the ancillary petition of the Trustee and the creditors praying that the proceedings in the State Court be enjoined. The District Judge ruled that a United States Court is without jurisdiction to enjoin proceedings in a State Court notwithstanding that the proceedings in the State Court have been instituted as a result of a collusion for the sole purpose of defrauding creditors of the bankrupt and to deprive a Court of the United States of its jurisdiction and prevent it from effectuating its judgment. The Court of Appeals affirmed this ruling of the District Court.

The fundamental question presented in the petition is whether 62 Stat. 968, 28 U.S.C. 2283, Act June 25, 1948, c. 646, providing that a court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgment, confers upon a United States court, sitting in bankruptcy, jurisdiction to enjoin proceeding in a State court of probate which was instituted for the sole purpose of defrauding creditors of a bankrupt and to deprive the United States Court of its jurisdiction. The Referee in Bankruptcy having held, unreversed, that the widow did not intend to make the application for twelve months support out of the estate of her husband, has had several years' support out of the estate prior to the filing of the application, has further received large sums of money which she has converted to her own use, has agreed to the application for twelve months support only upon the insistence of her son's attorneys, her son being the bankrupt, has caused appraisers to value the property at $4,500.00, whereas the true value of the property is approximately $45,000.00, the question presented in this petition is whether, admitting all these facts, a United States Court is without jurisdiction to enjoin fraudulent proceedings in the State Court.

STATEMENT OF THE CASE.

The basis for Federal jurisdiction is the proceeding in bankruptcy in the United States District Court for the Middle District of Georgia.

The essential facts are contained in the petition for adjudication of B. Sam Engram as bankrupt, the ancillary petition of the creditors and the trustee in bankruptcy praying an injunction against Mrs. Mabel Dell Engram, mother of the bankrupt, and the motion filed by Mrs. Engram to dismiss the ancillary petition for want of jurisdiction. (R. 1-20.) The case was heard by the Referee in Bankruptcy to whom the matter was referred by the United States District Judge by general order of reference. The Referee in Bankruptcy found, after extensive hearings, that Mrs. Mabel Dell Engram was the widow of Samuel Franklin Engram and the mother of the bankrupt; that the widow collected substantial sums of money out of her husband's estate as temporary administratrix, —Samuel Franklin Engram having died intestate,—and that she converted these sums to her own use; that the bankrupt is her son and an heir of Samuel Franklin Engram; that respondent, in addition to the large sums of money which she received out of the estate of her husband, has received support out of the estate from November 9, 1952 until March 8, 1955, more than two years, without applying to the Court of Ordinary, which is a probate court, for a judgment setting aside to her twelve months support. On March 8, 1955 she filed such application upon the insistence of her bankrupt son's attorneys and had appraisers appointed on the same day, as is provided by Georgia law. On the same day said appraisers made a report, setting aside practically the whole estate. The bankrupt had one-third interest in the estate and this one-third interest is of the value of $16,000.00 The appraisers valued practically the whole estate at $4,000.00 and have set aside the same to Mrs. Engram, Respondent.

The appraisers were selected by the attorneys of the bankrupt who also handled the case for Mrs. Engram. On June 15, 1956 the Referee in Bankruptcy issued a judgment and decree, finding among others the above stated facts, conclusions, and enjoining respondent permanently from prosecuting her application in the State Court, there being no judgment rendered in the State court as yet. The Referee in Bankruptcy further held and adjudicated that the proceedings in the State Court were initiated for the sole purpose of hindering, delaying and defrauding the creditors of B. Sam Engram, bankrupt, and, therefore, should be enjoined. (R. 21-30.)

Respondent petitioned the District Court to review the judgment of the Referee. On review, the District Judge reversed the Referee in Bankruptcy on the sole ground that a United States Court lacked jurisdiction to enjoin proceedings in the State court, though the proceedings may be fraudulently brought. (R. 50-64.) He directed the Referee to sustain the motion to dismiss the ancillary petition.

The trustee appealed to the United States Court of Appeals for the Fifth Circuit. On October 22, 1957 the Court of Appeals "Per Curiam" affirmed the judgment of the District Court without writing an opinion except agreeing with the reasoning of the District Court. (R. 72-73.) A motion for rehearing was denied without an opinion on December 10, 1957. (R. 76-79.)

REASONS FOR GRANTING THE PETITION.

The United States Court of Appeals for the Fifth Circuit has decided an important question of Federal law which has not been but should be settled by this Court.

Specifically, the question involves the jurisdiction of the United States Court to enjoin proceedings in the State court where the proceedings in the State Court have been instituted or the sole purpose of depriving that United States Court of jurisdiction and for the purpose of nullifying its judgment. In bankruptcy court, this has the effect of concealing the assets of the bankrupt and placing the same beyond the reach of the bankruptcy court. Should the judgment of the District Court be allowed to stand, it would completely nullify the Bankruptcy Act.

Until the present case came to be heard, this question has never been decided. The District Judge, in his elaborate decision, cited numerous cases. His basic points are as follows:

a. Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause. (R. 55.)

b. If the proceeding in the State Court is to try title or assert a lien against specific property not affected by bankruptcy, the State Court has priority of jurisdiction as against the bankruptcy Court. (R. 60.)

c. This case may be likened to a case where only one of three partners is adjudicated a bankrupt. (R. 61.)

d. Where a husband, who is the principal beneficiary of the estate of his deceased wife, was adjudged a bankrupt pending the administration of his wife's estate in the State Probate Court, the latter Court was not ousted of the possession of the wife's estate by the bankruptcy of the husband, but retained jurisdiction to make disposition of the assets of the wife's estate according to law. (R. 63.)

e. Where the jurisdiction of a court, and the right of plaintiff to prosecute this suit in it, have once attached, that rignt can not be arrested or taken away by proceeding in another court. (R. 55-56.)

Of the many, many cases cited by the Court and counsel, none involved question of fraud or collusion, except *Muffler vs. Petticrew Real Estate Co.*, 6th Cir., 132 F. 2nd 479 (7) where the question of fraud was incidentally involved, it being charged that the executor attempted to defraud an heir, not the court, nor creditors, and the Court held that such charge did not give a Federal Court jurisdiction over the matter.

Petitioner contended that the following principles govern this case:

a. Equity has inherent power to grant relief against a judgment on the ground of fraud, especially if it was practiced on the court, inducing it wrongfully to assume jurisdiction. . . . The power of equity in this respect is

inherent. 49 C.J.S. 732, #372. Fraud affects fatally even the most solemn judgments and decrees. *Nudd vs. Burrows*, 91 U.S. 426. Fraud will vitiate any judgment. *Kieley vs. McGlynn*, 21 Wall 503, 22 L.Ed. 599.

It is a familiar doctrine that a judgment of any court may be attacked and set aside on the ground that it was procured through fraud practiced upon the court by the party promoting the proceedings. A judgment may be impeached for the purpose of showing that it was procured by the debtor for the purpose of avoiding the operation of the Bankruptcy Act *Micheals vs. Post*, ,88 U.S. 398, 22 L. Ed. 520.

b. Section 2283 of Title 28, U.S. Code does not forbid a court of the United States to grant an injunction where necessary in aid of its jurisdiction or to protect or effectuate its judgment. *D. G. Bland Lumber Company vs. National Labor Relations Board*, 177 F. 2nd 555. The bankruptcy court may not only enjoin the officers of the State courts but may stay the proceedings in the Courts themselves when necessary to enforce their jurisdiction to administer bankruptcy assets. *McLaughlin vs. Knop*, 214 F. 260. A referee in bankruptcy has power to enjoin a state officer in enforcement of a state statute if necessary to prevent defeat or impairment of his jurisdiction. *In Re Davis Standard Bread Co.*, 46 F. Supp. 841. Bankruptcy courts in matters of bankruptcy may be authorized to interfere by injunction with proceedings in State Courts. *In Re Moore*, 42 F. 2nd 475; *Scott vs. Goodman*, 24 F. 2nd 175; *In Re Diversey Bldg. Corp.*, 86 F. 2nd 456, certiorari denied 300 U.S. 662.

CONCLUSION.

Two basic and important legal principles have met in this case and are in conflict. The rule that where the jurisdiction of a court has once attached, that right can not be arrested or taken away by proceedings in another court is in conflict with the basic rule of law that fraud vitiates even the most solemn judgment of the highest Court and Section 2283 of Title 28, U.S. Code does not forbid a court of the United States to grant an injunction where necessary in aid of its jurisdiction or to protect or effectuate its judgment. This question has never been resolved and it has never been decided which of the two rules must yield to the other.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit should be granted.

T. T. MOLNAR,
Cuthbert, Ga.,
Attorney for Petitioner.

APPENDIX I.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16560

WALTER E. TAYLOR, JR., Trustee in Bankruptcy for B. SAM ENGRAM, Bankrupt,
Appellant,

versus

MRS. MABEL DELL ENGRAM,
Appellee.

Appeals from the United States District Court for the Middle District of Georgia.

(October 22, 1957.)

Before HUTCHESON, Chief Judge, and BORAH and CAMERON, Circuit Judges.

PER CURIAM: This is an appeal by the trustee from an order of the district judge which, reversing for want of jurisdiction the order of the referee, enjoining Mrs. Mabel Dell Engram, the mother of the bankrupt, from proceeding with her application in the Court of Ordinary of Clay County, Georgia, for a statutory 12 months' support out of the estate of her deceased husband, bankruptcy's father, ordered the petition for injunction dismissed.

The sole question presented for our decision is whether the district judge erred in so holding. In his thorough and thoughtful opinion,[1] reviewing the proceedings which culminated in the referee's order and the petition for review, the district judge carefully and correctly set out the facts and as carefully and correctly canvassed the authorities and stated the applicable law.

In complete agreement not only with the disposition made by the district judge but with the reasons given in his opinion therefor, we find it unnecessary to further labor the matter, and, upon the considerations and for the reasons given in his opinion, we order his judgment AFFIRMED.

A true copy:

Test:

EDWARD W. WADSWORTH,
(Seal) Clerk, U. S. Court of Appeals,
Fifth Circuit.
By CLARA R. JAMES,
Deputy.

New Orleans, Louisiana.

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[1] In the Matter of B. Sam Engram, Bankrupt, ...F. Supp. .... (1-19-57).

JUDGMENT.

Extract from the Minutes of October 22, 1957.

No. 16,560.

WALTER E. TAYLOR, JR., Trustee in Bankruptcy for B. SAM ENGRAM, Bankrupt,

versus

MRS. MABEL DELL ENGRAM.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, Walter E. Taylor, Jr., Trustee in Bankruptcy for B. Sam Engram, Bankrupt, be condemned to pay the costs of this cause in this Court in due course of the administration of the estate of said bankrupt.

APPENDIX II.

Filed at 11:00 A. M. Jan. 19, 1957.

In the United States District Court for the Middle District of Georgia, Columbus Division.

In the Matter of:

B. Sam Engram, Bankrupt.

#2313 & 2316.

Bootle, District Judge:

The petition for review, filed by Mrs. Mabel Dell Engram, the mother of the bankrupt, presents the question whether the Referee erred in permanently enjoining her from proceeding with her application in the Court of Ordinary of Clay County, Georgia, for a statutory twelve months support out of the estate of her deceased husband, bankrupt's father.

The record shows that bankrupt's father, Samuel Franklin Engram, died intestate on November 9th, 1952, leaving surviving him his widow, Mrs. Mabel Dell Engram, and two sons, one of whom is the bankrupt. On May 18th, 1953, the widow was appointed temporary administratrix. On March 7th, 1955, she made application for appointment as permanent administratrix. On March 5th, 1955, she made application to the Court of Ordinary for a statutory twelve months support under the provisions of Section 113-1002 of the Code of Georgia Annotated.

On March 30th, 1955, an involuntary petition in bankruptcy was filed against B. Sam Engram by three of his creditors and on the following day, March 31st, 1955, the same creditors filed in this Court their petition for equitable relief alleging that B. Sam Engram had been adjudicated a bankrupt and praying that bankrupt's mother, Mrs. Mabel Dell Engram, be enjoined from proceeding further with her application for a twelve months support. After the appointment of the Trustee in bankruptcy, he was made a party plaintiff in said petition for equitable relief and adopted the petition of the creditors. In the meantime, and, on March 8th, 1955, the appraisers, appointed by the Court of Ordinary for the purpose, filed their report with said Court setting aside certain real estate and household furniture as being necessary for the support and maintenance of said widow and valued at $4,500.00. In accordance with the regular procedure, the Court of Ordinary cited all persons concerned to show cause before the Court of Ordinary on the first Monday in April, 1955, why said application should not be granted.

Upon the filing of this ancillary petition for injunction, and on March 31st, 1955, this Court referred the same to the Referee "to take such further proceedings therein as are required and permitted by the Act of Congress relating to bankruptcy." The widow filed her motion to dismiss said ancillary petition contending that this Court lacks jurisdiction to enjoin her from proceeding with her petition for a year's support out of the estate of her deceased husband because:

"a. In so far as the property inherited by the bankrupt B. Sam Engram from his father is concerned, this Court can only deal with the title of the bankrupt and that title is inferior to a Year's Support for his mother out of his father's estate;

"b. The creditors of an heir cannot contest with the widow of the heir's intestate her right to a Year's Support out of the estate of said intestate;

"c. This Court is without jurisdiction to determine whether or not Mrs. Mabel Dell Engram should be awarded a year's support, and whether or not she had already received such a support at the time she filed her petition therefor;

"d. As appears from the allegations of the petition, the Year's Support had already been set aside to Mrs. Mabel Dell Engram at the time of the filing of the petition of Well Dairies Co-operative et al., in this Court, and there is no further act or thing which she can do in connection with the granting of the Year's Support, and therefore no act or conduct that can be enjoined."

The Referee never formally acted upon this motion to dismiss, but treated his findings of fact, conclusions of law and judgment, hereinafter mentioned, as having the effect of overruling said motion to dismiss. After a number of hearings, the Referee, on June 15th, 1956, made his findings of fact, finding the facts as hereinabove stated and additionally that bankrupt's

father left an estate of over 200 acres of land with a house and certain moneys and bonds; that the widow moved from said home after the death of her husband, but collected whatever rents there were for the years 1952 through 1955; that she made no application for a year's support prior to March 5th, 1955; that her application for appointment as temporary administratrix was for the purpose of collecting the proceeds of insurance, etc., and that she lived out of the moneys so collected; that she has made no accounting to the two sons for the personal property of the estate; that bankrupt was insolvent at the time when a petition for a receiver had been filed against him in the Superior Court of Randolph County on September 11th, 1955; that the widow never figured on claiming a year's support until after the filing of said petition for a receiver and that it was only at the insistence of the attorneys who represent both her and the bankrupt that she made a claim; that said application for twelve months support was made solely to hinder, delay and defraud the creditors of bankrupt who had a one-third interest in said estate of his father; that the widow, by her failure to claim a year's support earlier, is estopped from claiming it now to defeat bankrupt's creditors; that the appraisers set aside the entire estate of bankrupt's father with the exception of a small tract on the edge of the house and lot tract and that the part left was of only a few hundred dollars value (the evidence shows that the deceased owned something over 200 acres and that the appraisers set apart 58.08 acres, which, however, contained the improvements); that the moneys collected by the widow were spent by her as temporary

administratrix and were unaccounted for and was approximately the same amount as set apart to her and that she had had at least two years support out of the estate. The Referee then concludes as a matter of law that the application for the year's support was made for the deliberate purpose of hindering, delaying and defrauding bankrupt's creditors and, accordingly, he entered a judgment enjoining the widow permanently from proceeding any further with her year's support.

In the opinion of this Court the widow's motion to dismiss the ancillary petition for equitable relief should have been sustained, that the Referee erred in not sustaining it and that it is not necessary for the Court to express any opinion with respect to his findings of fact and other conclusions of law.

Under the rules of inheritance in Georgia the widow and two sons were entitled to inherit equally the decedent's estate. Georgia Code Annotated 113-903 (3) (4). Upon decedent's death the title to his real estate vested immediately in his widow and two sons "subject to be administered by the legal representative . . . for the payment of debts and the purposes of distribution." Georgia Code Annotated 113-901. The title to personalty vested in the administrator for the benefit of heirs and creditors. Georgia Code Annotated 113-901. The widow, however, was entitled also to a twelve months support which ranks "among the necessary expenses of administration, and to be preferred before all other debts, except as otherwise specially provided . . ." Georgia Code Annotated 113-1002. As the widow's

attorneys frankly concede in their brief "of course, if Mrs. Engram had received one year's support she would not be entitled to take another under the statute." Moreover, "the laws of Georgia allow a widow one year's support for herself and children out of the estate of her deceased husband; . . . the laws do not contemplate that she shall live at the homestead and consume the provisions belonging to the estate and have a year's support in addition to what she may thus have consumed, allowed to her; . . . in all application for a year's support to be assigned her, she must be held chargeable with the value of what she had previously consumed." *Wells v. Wilder*, 36 Ga. 194. See also *Hill v. Hill*, 55 Ga. App. 500, 502 and *Smith v. Smith*, 73 Ga. App. 567, 572. Also, "Long lapse of time between the death of the husband and the widow's application for year's support may be considered by the ordinary in connection with other facts tending to show that the widow had received a support from the estate or had waived it expressly or impliedly. And in passing upon the application the ordinary should give weight to evidence as to such facts in determining the amount to be granted, or whether the application should be wholly refused." *Federal Land Bank v. Henson*, 166 Ga. 857 (5).

The fundamental rule of law applicable here is of such long standing that in the case of *Peck, et al., v. Jenness, et al.*, reported in 7 Howard 612, 48 U. S. 612, 12 L. Ed. 841, it was remarked, "It is a doctrine too long established to require a citation of authorities . . ." The rule of law referred to and the full quotation are:

"It is a doctrine of law too long established to require a citation of authorities, that, where a Court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other Court; and that, where the jurisdiction of a Court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another Court. These rules have their foundation, not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one, if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice. In the case of *Kennedy v. The Earl of Cassilis*, Lord Eldon at one time granted an injunction to restrain a party from proceeding in a suit pending in the Court of Sessions of Scotland, which, on more mature reflection, he dissolved; because it was admitted, if the Court of Chancery could in that way restrain proceedings in an independent foreign tribunal, the Court of Sessions might equally enjoin the parties from proceeding in chancery, and thus they would be unable to proceed in either Court. The fact, therefore, that an injunction issues only to the parties before the Court, and not to the Court, is no evasion of the difficulties that are the necessary result of an attempt to exercise that power over a party who is a litigant in another and independent forum."

Other illustrative cases are *Kline v. Burke Construction Co.*, 260 U. S. 226, 67 L. Ed. 226 and *Bryan v. Speakman*, 5th Cir., 53 F. 2d 463 (4). The latter case holds that where a bill for foreclosure and receivership was sanctioned and filed in State Court, that Court had custody of mortgaged property notwithstanding it had not yet appointed its receiver when bankruptcy receiver took possession. See also *Lion Bending and S. Co. v. Karatz*, 262 U. S. 77, 67 L. Ed. 871.

It was said in *International Bank v. Sherman* (1880), 101 U. S. 403, 406, 25 L. Ed. 866 and in *Mueller v. Nugent* (1901), 184 U. S. 1, 14, 46 L. Ed. 405, that the filing of a petition in bankruptcy is a caveat to all the world, and in effect an attachment and injunction. As was held, however, in the case of In Re Dayton Coal and Iron Company, 291 Fed. 390, 396, "This remark, however, must be taken with reference to the facts then before the Court and 'not as applicable to all intents and purposes'. *York Mfg. Co. v. Cassell*, 201 U. S. 344, 353, 26 Sup. Ct. 481, 50 L. Ed. 782; *Jones v. Springer*, 226 U. S. 148, 155, 33 Sup. Ct. 464, 57 L. Ed. 161. Thus taken, its effect is: That the filing of the petition so impounds the property of the debtor then in his possession, that, as held in *Bank v. Sherman*, those who deal with it between the filing of the petition and the adjudication do so at their peril, and cannot acquire title thereto by transfer from the debtor; and that, as held in *Mueller v. Nugent*, the bankruptcy Court may summarily compel its surrender by one holding it merely as agent of the debtor. *Babbitt v. Dutcher*, 216 U. S. 102, 30 Sup. Ct. 372, 54 L. Ed. 402, 17 Ann. Cas. 969." For a similar narrowing interpretation

of the "caveat" language of the Supreme Court, see *Linstroth Wagon Co. v. Ballew,* 149 Fed. 960, 965.

It is not to be gainsaid that a Court of the United States may in accordance with 28 U. S. C. A. 2283 grant an injunction to stay proceedings in a State Court where necessary in aid of its jurisdiction or to protect or effectuate its judgment. This is a jurisdiction, however, which, under the authorities, is to be cautiously exercised and, in the words of the statute, only when "necessary in aid of its jurisdiction, or to protect or effectuate its judgment." In the recent case of *Callaway v. Benton,* 336 U. S. 132, 93 L. Ed. 553, the Supreme Court held that in the Central of Georgia reorganization plan the question whether the acceptance of the offer by the Southwestern Railroad Company required a unanimous vote of its stockholders was for the State Court to decide and that the United States Court could not restrain a State Court action brought to enjoin the proposed sale. The Court said: "There can be no question, however, that Congress did not give the bankruptcy Court exclusive jurisdiction over all controversies that in some way affect the debtor's estate." At page 142 U. S., page 561 L. Ed. Moreover, the Court pointed out in footnote 11 that even if the controversy had involved property within the exclusive jurisdiction of the bankruptcy Court, that court could, in its discretion, postpone action pending adjudication of the question in the State Court but withheld judgment as to whether, under such circumstances the bankruptcy Court would have had to withhold judgment. The *Callaway* case is right much in point factually The Central of Georgia was being reorganized in bankruptcy Court. It was

the owner of a leasehold interest on property of the Southwestern Railroad Company. It did not own the reversion. The reorganization plan extended to Southwestern the privilege of selling the reversion to the Central's trustee, if it so desired. The question arose in the State Court as to whether Southwestern could make such sale under its charter absent the unanimous approval of its stockholders. Such question to an extent and in some way affected the Central's estate in bankruptcy, but not sufficiently, under the Supreme Court's holding, to permit the bankruptcy Court to enjoin the State Court action. In the instant case, it must be remembered that the decedent's estate is not in bankruptcy. The mother is not in bankruptcy. The other brother is not in bankruptcy. The only bankrupt is B. Sam Engram, and the only property he owns, insofar as the immediate controversy is concerned, is a one-third undivided interest in the decedent's estate and that interest is subject to the expenses of administration, chief among which is a year's support for the widow, assuming that she has not already received the same or in some way lost her right thereto.

When the *Callaway* case was in the United States Court of Appeals for the Fifth Circuit en route to the Supreme Court, the Court of Appeals convincingly wrote: "We think the bankruptcy Court erred in attempting to exercise exclusive jurisdiction over property which the debtor did not own and upon which it had no lien. The debtor was in actual possession of the tangible property leased by it, but it held the same as lessee, not as owner in fee." *Benton v. Callaway*, 5th Cir., 165 F. 2d 877, 880.

The respective jurisdictions of State Courts and bankruptcy Courts are exhaustively treated in 28 Am. Jur., page 399, Injunctions, Section 216, et seq.; 6 Am. Jur., page 727, Bankruptcy, Section 297, et seq., including Sections 300 and 301, and in 8 Corpus Juris Secundum, page 924, Bankruptcy, Section 261, et seq.

A proceeding in a State Court to ascertain all of the debts and administer all of the property of an insolvent person, which is the essence of bankruptcy, or a proceeding which, though having a lesser scope, will be governed by an application of the Bankruptcy Act on the occurrence of bankruptcy, as where transfers and liens otherwise valid are nullified by bankruptcy, is suspended entirely by bankruptcy though prior in time to bankruptcy. But if the proceeding in the State Court is to try title or assert a lien against specific property not affected by bankruptcy, the State Court has priority of jurisdiction as against the bankruptcy Court. *In Re Moore*, D.C. N.D. Ga., 42 F. 2d. 475. See also *Scott v. Goodman*, D.C. N.D. Ohio, 25 F. 2d. 175. Similarly, a State Court suit pending at the onset of bankruptcy for recovery by a defrauded vendor of property purchased on credit by the debtor through a fraudulent credit statement can proceed unaffected by bankruptcy. *Lindstroth Wagon Co. v. Bailew*, *supra*. Analogously, though bankruptcy does not oust State Court of jurisdiction acquired in a receivership proceeding filed within four months of bankruptcy to enforce a lien more than four months old and hence not affected by bankruptcy, the bankruptcy Court has summary jurisdiction to order the State Court receiver to turn over to the bankruptcy trustee excess

funds left in the State Court receiver's hands after satisfaction of the lien. *Atlanta Flooring and Insulation Co v. Russell,* 5th Cir., 145 F. 2d. 493, petition for rehearing denied 146 F. 2d. 884; *Atlanta Flooring and Insulation Co. v. Oberdorfer Insurance Agency,* 5th Cir., 136 F. 2d. 457.

The reasoning in the above cited decisions applies to the instant case in that a widow's right to a twelve months support has priority over the bankrupt's claim as an heir. The bankrupt's inheritance was subject to the widow's claim for a year's support and remains subject thereto both before and after bankruptcy.

This case may be likened also to a case where only one of three partners is adjudicated a bankrupt. Such an assumed case is covered explicitly by Section 5 (i) of the Bankruptcy Act, which says that in such case, "the partnership property shall not be administered in bankruptcy, unless by consent of the general partner or partners not adjudged bankrupt; but such general partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit and account for the interest of the general partner or partners adjudged bankrupt." To the same effect, Collier on Bankruptcy, Volume 1 page 741 says, "The only interest that the trustee of an individual bankrupt partner has in partnership property in the hands of the unadjudicated partner is the right to demand and receive the partner's interest, if any, in the firm assets after an accounting and payment of debts out of property belonging to the partnership." See also *Market Oil & Gas Co. v. Staley,* 5th Cir., 218 Fed. 45 (3)

The Court of Ordinary is a Court of general jurisdiction *Stringfellow v. Stringfellow,* 112 Ga. 494, 495. The Court of Ordinary of Clay County, with the right of appeal from it to the Superior Court of said County, is the proper Court to administer the estate of the bankrupt's deceased father. As a part of that administration that Court can properly determine all questions raised and to be raised in reference to the widow's claim for a twelve months support. Said Court may have other questions of administration to resolve, for instance, whether or not the bankrupt has received any advancements within the meaning of Section 113-1013 of the Georgia Code Annotated, or is simply a debtor of the estate, and, in that connection, whether an administrator holding a claim against a bankrupt heir may enforce it only in the Court of bankruptcy, and whether an indebtedness of a bankrupt to the estate of his intestate father can, or cannot, be set off against his interest as an heir in real estate. See *In Re Von Ruden,* D.C. D. Minnesota, 22 F. 2d 860. But these are questions which may arise in the State Court and with which this Court is not presently involved. The bankruptcy trustee, if he is so minded, may with authorization from this Court intervene in the State Court proceedings, he being a privy of the bankrupt heir, *(McGahee v. McGahee,* 204 Ga. 91-96), and, as Judge Foster stated in the case of *McLoughlin v. Knop,* D.C. E.D. La., 214 Fed. 260, 263, "I have no doubt the State Court will give due consideration to his contentions . . and will ultimately decide all questions properly according to the law and evidence of the case." In the meantime, the final administration of the bankruptcy estate will have to await the administration of the bankrupt's father's

estate with respect to personally belonging to said decedent's estate and with respect to realty also, unless with respect to the real estate the Referee should decide that the bankrupt's interest therein may and should be sold subject to the right of the administratix therein for administration purposes, as was held in the case of *In Re Von Ruden, supra.*

The case of *Byers v. McAuley*, 149 U.S. 608, 37 L. Ed. 867, is doubly apposite holding both that where property is in the possession of one Court, of competent jurisdiction, such possession cannot be disturbed by process out of another Court and that a Federal Court has no original jurisdiction in respect to the administration of a deceased person, and it cannot, by entertaining jurisdiction of a suit against the administrator, draw to itself the full possession of the estate, or the power of determining all claims against or to it.

Moreover, allegations of fraud, mismanagement or collusion on the part of the administratrix in the State Court matter does not affect the question of interference with the State Court's jurisdiction. *Muffler v. Petticrew Real Estate Co.*, 6th Cir., 132 F.2d. 479 (7).

Perhaps the case nearest in point is *In Re Naslund*, D.C. W.D. Wash. N.D., 6 F. Supp. 109, holding that where a husband, who was the principal beneficiary of the estate of his deceased wife, was adjudged a bankrupt pending the administration of his wife's estate in the State Probate Court, the latter Court was not ousted of the possession of the wife's estate by the bankruptcy

of the husband, but retained jurisdiction to make disposition of the assets of the wife's estate according to law. The cases of *Hull v. Dicks,* 235 U. S. 584, 59 L. Ed. 372, and *Seiden v. Southland Chenilles'*, 5th Cir., 195 F. 2d. 899, are of particular interest in that they deal with bankruptcy and with the widow's twelve months support under the Georgia statute. These cases hold nothing contrary to *In Re Naslund, supra,* and are clearly distinguishable in that in each case the bankruptcy Court had sole possession of the decedent's estate and were in no manner interfering with the jurisdiction or possession of State Courts. *In Re Rhodes,* D.C. N.D. Ohio, 190 Fed. 117 holds that a homestead set apart in a State Probate Court to one who later becomes a bankrupt is binding upon the bankruptcy Court. Many of the cases herein cited are discussed in the case of *In Re Burden,* D.C. D. Nebraska, 83 F. Supp. 416, which holds that under the modernization and revision of the Bankruptcy Act,. effected September 22nd, 1938, the Referee has summary jurisdiction to cancel execution liens obtained against an insolvent debtor within four months next prior to the filing of the petition in bankruptcy through judgment and the issue and levy of execution in the State Court.

For the reasons herein stated the judgment of the Referee that Mrs. Mabel Dell Engram be restrained and enjoined permanently from proceeding any further with the year's support is hereby reversed and upon return of the matter to him he is directed to enter an order sustaining her motion to dismiss the ancillary

petition for injunction insofar as it seeks to enjoin her from proceeding further with the application for twelve months support.

This 19 day of January, 1957.

W. A. BOOTLE,
United States District Judge

Filed Jan. 19, 1957.